UNITED NATIONS

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Security Council

Distr.
GENERAL

S/1998/575
29 June 1998
ENGLISH
ORIGINAL: CHINESE, ENGLISH, FRENCH AND RUSSIAN

Draft resolution

The Security Council,

Welcoming the report of the Secretary-General on the United Nations operation in Cyprus of 10 June 1998 (S/1998/488 and Add.1),

Noting that the Government of Cyprus has agreed that in view of the prevailing conditions in the island it is necessary to keep the United Nations Peacekeeping Force in Cyprus (UNFICYP) beyond 30 June 1998,

Reaffirming all its earlier resolutions on Cyprus,

Noting with concern that tensions along the ceasefire lines and restrictions to UNFICYP's freedom of movement continue,

1. Decides to extend the mandate of UNFICYP for a further period ending on 31 December 1998;

2. Reminds both sides of their obligations to prevent any violence directed against UNFICYP personnel, to cooperate fully with UNFICYP and to ensure its complete freedom of movement;

3. Calls upon the military authorities on both sides to refrain from any action, particularly in the vicinity of the buffer zone, which would exacerbate tensions;

4. Underlines the importance of early agreement to the reciprocal measures for the reduction of tension along the ceasefire lines proposed and subsequently adapted by UNFICYP, notes the fact that only one side has so far accepted this package, calls for early agreement to and rapid implementation of reciprocal measures and encourages UNFICYP to continue its efforts towards that end;

5. Reiterates its grave concern at the continuing excessive and increasing levels of military forces and armaments in the Republic of Cyprus and the rate at which they are being expanded, upgraded and modernized, including by the introduction of sophisticated weaponry, and the lack of progress towards any

significant reduction in the number of foreign troops in the Republic of Cyprus, which threaten to raise tensions both on the island and in the region and complicate efforts to negotiate an overall political settlement;

6. Calls upon all concerned to commit themselves to a reduction in defence spending and a reduction in the number of foreign troops in the Republic of Cyprus to help restore confidence between the parties and as a first step towards the withdrawal of non-Cypriot forces as described in the set of ideas (S/24472, Annex), stresses the importance of eventual demilitarization of the Republic of Cyprus as an objective in the context of an overall comprehensive settlement, and encourages the Secretary-General to continue to promote efforts in this direction;

7. Calls upon the leaders of the two communities to resume the discussions on security issues begun on 26 September 1997;

8. Welcomes the ongoing efforts by UNFICYP to implement its humanitarian mandate in respect of Greek Cypriots and Maronites living in the northern part of the island and Turkish Cypriots living in the southern part, and also the progress in the implementation of recommendations arising out of the humanitarian review undertaken by UNFICYP in 1995, as mentioned in the report of the Secretary-General;

9. Welcomes also the appointment of the new third member of the Committee on Missing Persons, and calls for implementation without delay of the agreement on missing persons of 31 July 1997;

10. Reiterates its support for the efforts of the United Nations and others concerned to promote the holding of bi-communal events so as to build cooperation, trust and mutual respect between the two communities, regrets the suspension of such activity by the Turkish Cypriot leadership and urges both sides, and in particular the Turkish Cypriot side, to facilitate arrangements within which bi-communal contacts can take place uninterrupted and without formalities;

11. Requests the Secretary-General to submit a report by 10 December 1998 on the implementation of this resolution;

12. Decides to remain actively seized of the matter.

UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/1998/576
29 June 1998
ENGLISH
ORIGINAL: CHINESE, ENGLISH
FRENCH AND RUSSIAN

Draft resolution

The Security Council,

Welcoming the report of the Secretary-General on his mission of good offices in Cyprus of 16 June 1998 (S/1998/518),

Reaffirming all its earlier resolutions on Cyprus,

Calling once more upon all States to respect the sovereignty, independence and territorial integrity of the Republic of Cyprus and requesting them, along with the parties concerned, to refrain from any action which might prejudice that sovereignty, independence and territorial integrity, as well as from any attempt of partition of the island or its unification with any other country,

Reiterating its growing concern that negotiations on a comprehensive political solution have yet to make progress, despite the efforts of the Secretary-General and his Special Adviser and others in support of the United Nations efforts to promote a comprehensive settlement,

1. Reaffirms that the status quo is unacceptable and that negotiations on a final political solution of the Cyprus problem have been at an impasse for too long;

2. Reaffirms its position that a Cyprus settlement must be based on a State of Cyprus with a single sovereignty and international personality and a single citizenship, with its independence and territorial integrity safeguarded, and comprising two politically equal communities as described in the relevant Security Council resolutions, in a bi-communal and bi-zonal federation, and that such a settlement must exclude union in whole or in part with any other country or any form of partition or secession;

3. Stresses its full support for the Secretary-General's mission of good offices and for the efforts of his Special Adviser on Cyprus to resume a sustained process of direct negotiations aimed at achieving a comprehensive settlement on the basis of the relevant Security Council resolutions, and stresses also the importance of concerted efforts to work with the Secretary-General to that end;

4. Welcomes the intention of the Secretary-General to continue to explore possibilities that may lead to a new momentum in this process of negotiations;

5. Calls once again upon the leaders of the two communities, in particular the Turkish Cypriot side, to commit themselves to this process of negotiations, to cooperate actively and constructively with the Secretary-General and his Special Adviser and to resume the direct dialogue without further delay, and urges all States to lend their full support to these efforts;

6. Further calls in this context upon all parties concerned to create a climate for reconciliation and genuine mutual confidence on both sides, and to avoid any actions which might increase tension, including through further expansion of military forces and armaments;

7. Requests the Secretary-General to submit a report by 10 December 1998 on the implementation of this resolution;

8. Decides to remain actively seized of the matter.

UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/1998/577
29 June 1998
ENGLISH
ORIGINAL: ENGLISH AND RUSSIAN

Draft resolution

The Security Council,

Reaffirming its resolution 696 (1991) of 30 May 1991 and all subsequent relevant resolutions, in particular resolution 1173 (1998) of 12 June 1998 and resolution 1176 (1998) of 24 June 1998,

Reaffirming its firm commitment to preserve the unity, sovereignty and territorial integrity of Angola,

Having considered the report of the Secretary-General of 17 June 1998 (S/1998/524),

Expressing in the strongest terms its concern at the critical situation in the peace process, which is the result of the failure by the União Nacional para a Independência Total de Angola (UNITA) to complete its obligations under the "Acordos de Paz" (S/22609, annex), the Lusaka Protocol (S/1994/1441, annex), and relevant Security Council resolutions, including in particular its obligation to cooperate fully and without conditions in the immediate extension of State administration throughout the national territory,

Expressing its grave concern at the deterioration of the security situation in Angola as a result of the reoccupation by UNITA of localities where State administration was recently established, attacks by armed elements of UNITA, new manufacturing activities, and banditry,

Noting with deep concern cases of serious abuse by some elements of the Angolan National Police, and stressing the importance of strengthening the rule of law, including the full protection of all Angolan citizens throughout the national territory,

Recognizing the important role of the United Nations Observer Mission in Angola (MONUA) at this critical stage of the peace process,

1. Welcomes the recommendations of the Secretary-General in paragraph 44 of his report of 17 June 1998, and decides to extend the mandate of MONUA until 15 August 1998;

2. Decides also to resume the withdrawal of the military component of MONUA in accordance with paragraph 9 of resolution 1164 (1998) of 29 April 1998 as soon as conditions permit;

3. Requests the Secretary-General to reconsider the deployment of the additional civilian police observers authorized under paragraph 10 of resolution 1164 (1998), taking into account conditions on the ground and progress in the peace process;

4. Requests the Secretary-General to submit a report, as necessary, but no later than 7 August 1998, with recommendations regarding the United Nations involvement in Angola, taking into account the safety and freedom of movement of MONUA personnel and the status of the peace process;

5. Reiterates its demand that UNITA immediately stop any attacks by its members on the personnel of MONUA, international personnel, the authorities of the Government of Unity and National Reconciliation (GURN), including the police, and the civilian population, and calls again upon the GURN and in particular UNITA to guarantee unconditionally the safety and freedom of movement of all United Nations and international personnel;

6. Demands that the GURN and in particular UNITA cooperate fully with MONUA in providing full access for its verification activities, including the verification of the full demilitarization of UNITA, and reiterates its call on the GURN to notify MONUA in a timely manner of its troop movements, in accordance with the provisions of the Lusaka Protocol and established procedures;

7. Calls upon the GURN and in particular UNITA to refrain from the laying of new mines;

8. Expresses its appreciation to the Secretary-General, his Special Representative and the personnel of MONUA for assisting the GURN and UNITA to implement the peace process;

9. Decides to remain actively seized of the matter.

UNITED
NATIONS

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Security Council

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S/1998/578
26 June 1998

ORIGINAL: ENGLISH

REPORT OF THE SECRETARY-GENERAL ON THE UNITED NATIONS MISSION OF OBSERVERS IN PREVLAKA

I. INTRODUCTION

1. The present report is submitted pursuant to paragraph 7 of Security Council resolution 1147 (1998) of 13 January 1998, in which the Council requested me to report by 5 July 1998 on the situation in the Prevlaka peninsula and on progress made by the Republic of Croatia and the Federal Republic of Yugoslavia towards a settlement that would peacefully resolve their differences.

2. The United Nations Mission of Observers in Prevlaka (UNMOP) consists of 28 United Nations military observers (see annex) headed by a Chief Military Observer, Colonel Harold Mwakio Tangai (Kenya). The current mandate of the Mission expires on 15 July 1998.

3. In accordance with resolution 1147 (1998), UNMOP continues to monitor the demilitarization of the Prevlaka peninsula and of the neighbouring areas in Croatia and the Federal Republic of Yugoslavia by carrying out vehicle and foot patrols on both sides of the border, except when prevented from doing so by restrictions of movement imposed by one party or the other. As part of its work, the Mission holds regular meetings with local authorities in order to help strengthen liaison, reduce tension, improve safety and security and promote confidence between the parties. The Chief Military Observer also maintains contacts with the authorities in Zagreb and Belgrade in order to address issues arising from resolution 1147 (1998). Cooperation between UNMOP and the multinational Stabilization Force is maintained through regular meetings.

II. SITUATION IN THE AREA OF RESPONSIBILITY OF THE UNITED NATIONS MISSION OF OBSERVERS IN PREVLAKA

4. The area of responsibility of UNMOP consists of two United Nations-designated zones: a demilitarized zone and a United Nations-controlled zone. Both Croatia and the Federal Republic of Yugoslavia maintain their somewhat differing views on the exact delimitation of the two zones. Since the submission of my report of 30 December 1997 (S/1997/1019), the situation in the UNMOP area of responsibility has remained stable, despite the continuation of some long-standing violations of the demilitarization regime, including

restrictions of movement for the United Nations military observers and the presence of military elements.

5. The continuing presence of Yugoslav Army troops in the north-western part of the demilitarized zone is the most significant long-standing violation in that area. UNMOP assesses that the Yugoslav Army presence consists of approximately 130 to 150 personnel, but it is unable to ascertain the exact strength and armament of the troops because of restrictions of movement imposed by the Yugoslav authorities in the northern part of the demilitarized zone.

6. Long-standing violations of the United Nations-controlled zone continue as well, with the ongoing presence of approximately 25 to 30 Croatian special police, located at three positions and one checkpoint, and of approximately six Yugoslav (Montenegrin) border police, located at one position and one checkpoint.

7. In addition, the waters of the United Nations-controlled zone continue to be violated frequently by Croatian and Yugoslav fishing boats, as well as occasionally by Croatian police boats. Further, the Croatian authorities continue to grant civilians unauthorized access to the United Nations-controlled zone, close to the Prevlaka compound. The civilian presence grows appreciably during the summer months.

8. The violations referred to in the preceding paragraphs do not represent a significant threat to the demilitarization regime. In fact, there have been some improvements, especially on the Yugoslav side, in the observance of the regime. On the Montenegrin side of the border, the Yugoslav authorities removed restrictions on movement placed on UNMOP patrols to Ravni Brijeg in the northern part of the demilitarized zone. They have also partially lifted the restriction of movement to other parts of the northern demilitarized zone by requiring only a six-hour prior notification, down from the 72 hours that were required previously. However, a Yugoslav army liaison officer is still required to accompany UNMOP patrols. Throughout the reporting period, UNMOP has had complete access to all Montenegrin border police positions.

9. As regards freedom of movement of United Nations military observers elsewhere in the UNMOP area of responsibility, Croatia continues to deny them routine access to positions in the northern part of the demilitarized zone and to several positions in the southern part as well.

10. UNMOP has continued to appeal to the Croatian and Yugoslav authorities to improve their compliance with the demilitarization regime, in particular by removing the restrictions on movement of United Nations military observers, and to continue with the demining effort that began last November and December with the demining of limited areas inside the United Nations-controlled zone.

11. In April, the Yugoslav authorities indicated to UNMOP that they would conduct a mine-sweeping operation in two phases along the border with Croatia. The first phase was to start in early spring. However, to date, the operation has not commenced.

III. PROGRESS TOWARDS A SETTLEMENT

12. Over the last six months, the parties have continued to indicate, in their contacts with United Nations officials and in public statements, that they are willing to settle the Prevlaka dispute through bilateral negotiations pursuant to the Agreement on Normalization of Relations between the Federal Republic of Yugoslavia and the Republic of Croatia, signed at Belgrade on 23 August 1996 (S/1996/706, annex). Both have also informed UNMOP that special expert groups have been constituted in each country to deal specifically with the Prevlaka dispute and related border issues.

13. On 15 June, the Government of Croatia presented a proposal to the Federal Republic of Yugoslavia on a final resolution of the Prevlaka dispute, which has also been conveyed to the Security Council (S/1998/533, annex). The Federal Republic of Yugoslavia has, at the time of the writing of this report, not officially reacted to that proposal.

IV. FINANCIAL ASPECTS

14. Although an independent Mission, for administrative and budgetary purposes, the United Nations Mission of Observers in Prevlaka is treated as part of the United Nations Mission in Bosnia and Herzegovina. Consequently, the costs of maintaining the United Nations Mission of Observers in Prevlaka for the period from 1 July 1998 to 30 June 1999, amounting to $190,921,200 gross ($181,030,800 net), have been included in my report on the financing of the United Nations Mission in Bosnia and Herzegovina for the same period (A/52/786).

15. Should the Security Council decide to extend the mandate of United Nations Mission of Observers in Prevlaka beyond 15 July 1998, as recommended in paragraph 19 below, the costs of maintaining the Mission would be met from within the budget of the United Nations Mission in Bosnia and Herzegovina.

V. OBSERVATIONS

16. In the current reporting period, the stability in the UNMOP area of responsibility has not been disrupted by any serious incidents. However, there are also no signs that both parties will cease the continuing violations of the demilitarization regime in the two United Nations-designated zones. These violations do not threaten stability in the UNMOP area of responsibility; however, together with the continuing differences on the exact delimitation of the two United Nations-designated zones, they constitute a constant irritant in the relations between UNMOP and the local authorities, which should be halted.

17. In this situation, UNMOP assists in resolving disputes that could potentially lead to a rise in tension. As the military threat in the area has decreased, UNMOP has experienced an increase in difficulties of a civilian nature, such as claims by local landowners and fishermen to make commercial use of parts of the United Nations-controlled zone. UNMOP has avoided any steps that would prejudge the outcome of bilateral political negotiations on the Prevlaka dispute, in accordance with the commitment by both parties in the

Agreement on Normalization of Relations to respect the existing security regime established through United Nations monitoring until mutual agreement on Prevlaka is reached. Thus, UNMOP has been a stabilizing factor in the Prevlaka area and I appeal to both parties to provide the Mission with their full cooperation in the implementation of its mandate.

18. As regards political aspects, the parties have continued to indicate, in their contacts with UNMOP, that they retain their divergent interpretations of the Prevlaka dispute. For Croatia, it is a security issue, whereas the Federal Republic of Yugoslavia regards it as a territorial issue. No doubt, the persistence of these divergent interpretations presents an obstacle to a final resolution of the dispute. However, both parties have continued to reiterate their firm commitment to a negotiated resolution of the disputed issue of Prevlaka, in accordance with the Agreement on Normalization of Relations.

19. For the first time, a formal proposal for the settlement of the disputed issue of Prevlaka has been presented (see para. 13). It is to be hoped that this proposal will provide a much-needed impetus for the start of negotiations, and I urge Croatia and the Federal Republic of Yugoslavia to engage in substantive talks towards the resolution of the dispute. Meanwhile, since UNMOP plays an essential role in maintaining conditions conducive to negotiations, I recommend a further six-month extension of the UNMOP mandate until 15 January 1999.

20. In conclusion, I would like to commend the Chief Military Observer and the men and women of UNMOP for having carried out their important tasks in a conscientious and effective manner.

Annex

Composition and strength of the military elements of the United Nations Mission of Observers in Prevlaka as at 26 June 1998

Nationality	Number of military observers
Argentina	1
Bangladesh	1
Belgium	1
Brazil	1
Canada	1
Czech Republic	1
Denmark	1
Egypt	1
Finland	1
Ghana	2
Indonesia	2
Ireland	1
Jordan	1
Kenya	2
Nepal	1
New Zealand	1
Nigeria	1
Norway	1
Pakistan	1
Poland	1
Portugal	1
Russian Federation	1
Sweden	1
Switzerland	1
Ukraine	1
Total	28

UNITED
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GENERAL ASSEMBLY
Fifty-second session
Agenda items 36, 37 and 87
QUESTION OF PALESTINE
THE SITUATION IN THE MIDDLE EAST
REPORT OF THE SPECIAL COMMITTEE TO
INVESTIGATE ISRAELI PRACTICES
AFFECTING THE HUMAN RIGHTS OF
THE PALESTINIAN PEOPLE AND OTHER
ARABS OF THE OCCUPIED TERRITORIES

SECURITY COUNCIL
Fifty-third year

Identical letters dated 26 June 1998 from the Chargé d'affaires a.i. of the Permanent Mission of the Sudan to the United Nations addressed to the Secretary-General and to the President of the Security Council

In my capacity as Chairman of the Group of Arab States for the month of June 1998 and on behalf of the Arab States members of the League of Arab States, I have the honour to enclose herewith a statement issued on 25 June 1998 by the emergency meeting of the Council of the League of Arab States concerning the decision of the Government of Israel to expand the municipal borders of Jerusalem.

I should be grateful if you would have the text of the present letter and its annex circulated as a document of the fifty-second session of the General Assembly, under agenda items 36, 37 and 87, and of the Security Council.

(Signed) Mubarak Hussein RAHMTALLA
Chargé d'affaires a.i.
Chairman of the Group of Arab States

ANNEX

Statement issued by the Council of the League of Arab States on 25 June 1998

At an extraordinary session requested by the States of Palestine and the Sudan, the Council of the League of Arab States considered the serious decision taken by the Israeli Cabinet on 21 June 1998 aimed at expanding the municipal borders of Jerusalem to include the surrounding settlements and extensive areas of West Bank territory. The effect of this decision will be to destroy the landmarks of Jerusalem and alter its status as a holy city for each of the divine religions. It will also strengthen the Israeli hold over the city, erase its Arab identity and change its character and the distribution of its population.

Recalling the relevant Security Council and General Assembly resolutions on Jerusalem and the affirmed rights of the Palestinian people, and on the basis of the resolutions of the Arab Summit Conferences, in particular the Cairo Summit Conference of 1996, and the decisions of the Council of the League of Arab States, the Council strongly condemns this decision, which is blatant non-compliance with the terms of reference of the Madrid Peace Conference and all relevant General Assembly and Security Council resolutions, particularly Security Council resolution 252 (1968), which considers the measures taken by Israel in connection with Jerusalem to be invalid and affirms that Jerusalem has special status and that the same applies to it as to the rest of the occupied Arab territories. The decision is also a clear violation of the Fourth Geneva Convention of 1949 and The Hague Convention of 1907, and constitutes a hostile act against and a challenge to international legitimacy. Furthermore, it entails overt racism and the illegal appropriation of land, as well as loss of the rights of Palestinian citizens in the occupied territories.

The Council calls upon the United States of America, as a co-sponsor of the peace process, to compel Israel to comply with the terms of reference of the Madrid Peace Conference. While commending the position of the Russian Federation in this respect, it calls upon the latter, as a co-sponsor of the peace process, and upon the European Union and all concerned parties, to adopt earnest and decisive positions concerning Israeli practices which disregard the rights and feelings of all Muslims and Christians worldwide.

The Council urges the United Nations, particularly the Security Council, to convene an emergency session to discuss this serious matter, which will have extremely grave repercussions on the entire peace process and risk destroying it altogether. Moreover, it will place the whole Middle East region in a highly dangerous situation.

The Council also expresses its full and unequivocal support for the decisive position adopted by the State of Palestine and for the steadfastness of the Palestinian Arab people in the occupied Arab territories. It also supports the Palestinian right to oppose both the Israeli occupation and Israel's expansionist ambitions, and the Palestinian peoples's determination to hold onto land and the Arab identity of Jerusalem.

The Council calls upon the Arab, Islamic and international communities to demonstrate greater solidarity and cohesion in confronting Israeli positions and addressing Israeli provocations. It further calls upon those communities to hold intensive consultations with a view to adopting appropriate positions that will safeguard Arab and national rights, and urges them to provide all forms of support to the steadfast Palestinian people.

Given the clear international consensus that the Israeli plan should be condemned and rejected, the Council expresses its appreciation of the positions adopted by the international community and regional groups, and requests their support for the Arab right to counter unjust Israeli provocations.

The Council, while considering this to be an open session, requests the Secretary-General of the League of Arab States to take the necessary measures and inform the Council of developments in the situation. It further requests him to contact the Secretary-General of the United Nations, the Secretary-General of the Organization of the Islamic Conference, the Chairman of the Al-Quds (Jerusalem) Committee, the Secretary-General of the Organization of African Unity, the Vatican and the members of the Security Council, particularly the permanent members, and to endeavour to ensure that the Arab States appropriately convey to international organizations and the members of the international community the dimensions of this serious Israeli decision and the intense anger which it has caused, the aim being to place pressure on Israel immediately to revoke the policy of the Judaicization of Jerusalem. This should be done in coordination with the ministers for foreign affairs of the Arab States, to whom a report should be submitted at their next meeting.

UNITED NATIONS **S**

Security Council

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29 June 1998
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ORIGINAL: ARABIC

LETTER DATED 28 JUNE 1998 FROM THE PERMANENT REPRESENTATIVE OF IRAQ TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

On instructions from my Government, I have the honour to transmit to you herewith a letter dated 28 June 1998 from Mr. Mohammed Said Al-Sahhaf, Minister for Foreign Affairs of the Republic of Iraq, documenting statements made by senior Kuwaiti officials that threaten the sovereignty and security of Iraq and are clearly in violation of the Security Council resolutions expressing concern for the stability of the region and relations between Iraq and Kuwait.

I should be grateful if you would have the present letter and its annex circulated as a document of the Security Council.

(Signed) Nizar HAMDOON
Ambassador
Permanent Representative

98-18500 (E) 290698 300698

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Annex

Letter dated 28 June 1998 from the Minister for Foreign Affairs of Iraq addressed to the President of the Security Council

I am writing with reference to our letter dated 15 June 1998 addressed to you (S/1998/513, annex) concerning the outcome of the discussions that took place in the Security Council on the evening of 11 June 1998, under the item "Other matters", when the subject was raised of the identical Kuwaiti letters dated 8 June 1998 addressed to the Secretary-General and to the President of the Security Council (S/1998/484, annex) quoting statements improperly attributed to Mr. Taha Yasin Ramadan, Vice-President of the Republic of Iraq, concerning the demarcation of the boundary between Iraq and Kuwait.

Over and above the remarks made in our aforesaid letter, I should like to inform you and the members of the Council of a number of documented official statements made by senior Kuwaiti officials that have actually threatened the sovereignty and security of Iraq.

The Council, and two of its members in particular, namely the United States and the United Kingdom, met these grievous Kuwaiti statements with absolute silence. This strengthens our conviction, as it does that of all in the Council and in the world at large who are fair-minded, of the significance of the double standards that are employed by the United States of America and the United Kingdom and particularly of their woeful conduct within the Council.

Hundreds of the statements and pronouncements that have been made by senior Kuwaiti officials since the adoption of the relevant Security Council resolutions have been in clear violation of those resolutions expressing concern for the stability of the region and relations between Iraq and Kuwait. Why, then, did the representatives of the United Kingdom and the United States not comment on these Kuwaiti statements, even if only raised under the item "Other matters"?

The statements and pronouncements made by Kuwaiti officials explicitly acknowledge action taken to replace the political regime in Iraq and the utilization of Kuwaiti funds for this purpose. These statements and pronouncements also unequivocally acknowledge assistance given to outlaw groups and individuals and action taken with them against the security and integrity of Iraq.

I am transmitting to you herewith a presentation showing a number of the aforesaid statements by senior Kuwaiti officials, all of them tantamount to open interference in the internal affairs of Iraq and posing a threat to Iraq's sovereignty, security and stability and to security in the region.

I cannot here omit reference to the letter dated 24 June 1998 from the Permanent Representative of Kuwait to the United Nations addressed to you (S/1998/586). This letter provides us with an additional example that helps reveal the intentions of the Kuwaiti Government and its insistence on misrepresenting the facts despite Iraq's official assertion that the statements

in question were incorrectly attributed to Mr. Taha Yasin Ramadan, Vice-President of the Republic of Iraq, and Iraq's further assertion that the statements made by Mr. Ramadan do not in any sense whatever mean that Iraq is evading its obligations under Security Council resolution 833 (1993). Kuwait's insistence on misrepresenting this matter, including its resort to sound recordings in a game that has become familiar, only exposes the preconceived designs that Kuwaiti officials entertain for Iraq in addition to the grievous schemes and actions against Iraq that are illustrated by the examples of statements made by Kuwaiti officials that I am transmitting to you and to the members of the Security Council together with this letter.

As we inform you of these Kuwaiti statements and pronouncements, we remind you of the purposes and principles of the United Nations and, in particular, of Article 2, paragraph 1, of the Charter of the United Nations, which states that:

> "The Organization is based on the principle of the sovereign equality of all its Members."

Accordingly, we urge the Security Council to alert Kuwaiti leaders to the consequences of their constant insistence on making statements and pronouncements hostile to Iraq and to warn them to desist from the actions in which they engage in order to threaten Iraq's security and integrity. We expect the Council to express its concern at such statements and pronouncements and at such Kuwaiti official actions.

I should be grateful if you would bring this letter and its enclosure to the attention of the members of the Security Council and if you would have them circulated as a Council document.

(Signed) Mohammed Said AL-SAHHAF
Minister for Foreign Affairs
of the Republic of Iraq

Enclosure

Examples of hostile statements and pronouncements concerning Iraq made by senior Kuwaiti officials

1. Author: Sabah Al-Ahmad Al-Sabah, Minister for Foreign Affairs

   Date: 3 February 1993

   Source: Agence France-Presse, Abu Dhabi

   Purport: The Minister again asserted that his country would only establish relations with Iraq after the regime in that country was overthrown.

2. Action: Meeting with Jaber Al-Ahmad Al-Sabah, Amir of Kuwait

   Date: 31 January 1995

   Source: Al-Sharq al-Awsat, London/Insat al-Kuwayt

   Purport: The Amir and Saad Al-Abdullah Al-Sabah, Crown Prince and Prime Minister, received the President of the so-called Supreme Council of the Islamic Revolution in Iraq, Muhammad Baqir al-Hakim, for the coordination of action to overthrow of the regime of the Iraqi President.

3. Author: Su'ud Nasir Al-Sabah, Minister of Information

   Date: 28 October 1995

   Source: Agence France-Presse, Riyadh

   Purport: The Minister urged the so-called opposition to overcome its present fragmentation and to act to overthrow the political regime in Baghdad. It was his wish for the opposition that the day would come when it could replace the regime in Iraq, and he affirmed that his country supported the so-called opposition.

4. Author: Su'ud Nasir Al-Sabah, Minister of Information

   Date: 29 October 1995

   Source: Agence France-Presse, Dubai

   Purport: Kuwait rejected the call from the United Arab Emirates, supported by Qatar, for a reconciliation with Iraq mediated by the League of Arab States. The Minister went on to say that the issue was not that of an inter-Arab reconciliation, but the problem lay in the existence of the Iraqi regime. He again stressed that the terms of a reconciliation with the other Arab States would

require them to condemn the Iraqi regime and to participate in isolating it.

5. Author: Ali Sabah Al-Salim Al-Sabah, Minister of the Interior

Date: 21 January 1996

Source: Al-Sharq al-Awsat, London

Purport: The Minister stated that his country was cooperating with the Iraqi opposition because Kuwait and the so-called Iraqi opposition had a common denominator, namely the desire to replace the political regime in Iraq.

6. Action: Visit to Kuwait by the traitor al-Hakim

Date: 10 February 1996

Source: Agence France-Presse from the Kuwait News Agency on 10 February 1996

Purport: The Minister for Foreign Affairs received the President of the so-called Supreme Council of the Islamic Revolution in Iraq, Muhammad Baqir al-Hakim, to review the latest developments on the Iraqi scene and to coordinate action with a view to overthrowing the regime of the Iraqi President.

7. Author: Su'ud Nasir Al-Sabah, Minister of Information

Date: 23 February 1996

Source: Al-Jumhuriyah, Cairo

Purport: The Minister commented on statements made by United States Secretary of Defense William Perry to the effect that the United States would endeavour, together with the States of the region, to put an end to the regime in Iraq.

8. Author: Su'ud Nasir Al-Sabah, Minister of Information

Date: 14 September 1996

Source: Reuters, Kuwait

Purport: In a statement, the Minister stressed the need to overthrow President Saddam Hussein. He said that "We wish to see an end to this regime soon, and it will be necessary to take certain measures to bring that end about" in consultation with Kuwait's allies.

9. Author: Su'ud Nasir Al-Sabah, Minister of Information

Date: 16 September 1996

Source: Reuters, Kuwait

Purport: The Minister affirmed that his country would have no hesitation in agreeing to the deployment of United States forces and that his country's resolve to stand together with its allies against the Iraqi President was beyond any doubt. He stressed that stability in the region was not possible as long as Saddam remained in power.

10. Author: Muhammad Al-Sabah, Ambassador of Kuwait in Washington

Date: 12 May 1997

Source: Reuters, Kuwait

Purport: The ambassador said that the United States was endeavouring to overthrow the present Iraqi regime by tightening the stranglehold on the Iraqi leader through the United States Congress, which had approved a bill urging the White House to bring President Saddam Hussein to trial. He considered this an important element in the mechanism that was being put in place to overthrow the Iraqi regime.

11. Author: Su'ud Nasir Al-Sabah, Minister of Information

Date: 30 August 1997

Source: Al-Hayat

Purport: In an interview with Lebanese television, the Minister stated: "The continued presence of Saddam Hussein will keep the Gulf under threat, and he must be eliminated. All the Gulf States must be able to feel at ease without the viper in Baghdad."

12. Author: Su'ud Nasir Al-Sabah, Minister of Information

Date: 16 December 1997

Source: Al-Hayat

Purport: The Minister stated that "the treasury of the State of Kuwait is open for the overthrow of the Iraqi regime", that "all the probabilities and conjectures are that the regime in Iraq will be replaced" and that "Kuwait is interested in replacing the regime in Iraq, and what concerns the Kuwaiti Government is that the present Iraqi regime might remain in place". In reply to another question, the Minister stated: "Kuwait welcomes any grouping that weakens the present regime in Baghdad, whether a government

in exile or otherwise. The Iraqi opposition gets every cooperation from us, and we want to succeed in finding some kind of acceptable regime." Concerning a possible United States military strike against Iraq, the Minister said: "We cannot reject a strike on Iraq."

13. Author: Su'ud Nasir Al-Sabah, Minister of Information

Date: 19 December 1997

Source: Al-Ahram al-Arabi

Purport: The Minister affirmed his country's conviction that it was useless to deal with the Iraqi regime, repeating that "the Kuwaiti treasury is open for the overthrow of the Iraqi regime" and saying that Kuwait looked forward to a new regime in Iraq.

14. Action: The Amir, Prime Minister and Minister for Foreign Affairs of Kuwait meet with Baqir al-Hakim.

Date: 12 and 13 January 1998

Source: Agence France-Presse/Al-Hayat

Purport: The Amir and the two Ministers met with Muhammad Baqir al-Hakim, President of the so-called Supreme Council of the Islamic Revolution in Iraq, for the purpose of coordinating action for the overthrow of the Iraqi regime.

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LETTER DATED 29 JUNE 1998 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit herewith the report of my Investigative Team in the Democratic Republic of the Congo. Advance copies of the report were given to the Permanent Representatives of the Democratic Republic of the Congo and Rwanda on 15 June 1998 for transmittal to their Governments, whose comments will be published as Security Council documents.

It may be recalled that I established the Team in July 1997 to help break a deadlock between the Government of the Democratic Republic of the Congo and the Joint Investigative Mission mandated by the Commission on Human Rights to investigate allegations of massacres and other violations of human rights which arose from the situation that prevailed in eastern Zaire since September 1996.

The Government objected, inter alia, to the participation in the Mission of the Special Rapporteur on the situation of human rights in Zaire and to the period covered by its mandate. They urged that the mandate be extended back to 1 March 1993, in order to include: the ethnic violence which, from that time, pitted self-styled "indigenous" Zairians, originally supported by the Forces Armées Zaïroises (FAZ), against Zairians of both Hutu and Tutsi origin, as well as subsequent developments, such as the influx of Hutu refugees from Rwanda in July 1994, following the genocide in that country; the insecurity generated, both in Zaire and in Rwanda, by armed members of the ex Forces Armées Rwandaises (ex-FAR) and Interahamwe militia who maintained strict control over the refugees and launched raids into Rwanda; and the increasing violence to which Zairian Tutsis were subjected until the October 1996 uprising. A detailed account of those developments, which the Team recommends be further investigated, is provided in annex I to the attached report.

In response to the Government, I extended the period under investigation back to 1 March 1993. I appointed Chief Justice Atsu-Koffi Amega (Togo) as leader of my Investigative Team, with a mandate to investigate serious violations of human rights and international humanitarian law alleged to have been committed in the Democratic Republic of the Congo up to 31 December 1997. My initiative to establish the Team neither suspended nor supplanted the original Joint Investigative Mission, whose mandate has since expired and has not been renewed.

The events described in the report of the Team did not occur in a vacuum. The background to them is the terrible 1994 genocide in Rwanda which cast an enormous shadow, which has not yet lifted, over the whole Great Lakes region of Africa. This genocide led directly to the violence of the 1994-1996 period in eastern Zaire, which was publicly denounced by the Rwandan Government as a resumption in a neighbouring country of the 1994 genocidal practices. That same violence resulted in the creation, in September 1996, of the Alliance of Democratic Forces for the Liberation of the Congo (AFDL), and its successful military campaign against the regime of President Mobutu Sese Seko, which ended in Kinshasa on 17 May 1997.

It is a source of deep regret that, between its first deployment in August 1997 and its withdrawal in April 1998, the Team was not allowed to carry out its mission fully and without hindrance. Nevertheless, in spite of the difficulties outlined in the report, the Team was able to reach a number of conclusions that are supported by strong evidence. Two of these conclusions stand out.

The first is that all the parties to the violence that racked Zaire, and especially its eastern provinces, during the period under consideration have committed serious violations of human rights or international humanitarian law.

The second is that the killings by AFDL and its allies, including elements of the Rwandan Patriotic Army, constitute crimes against humanity, as does the denial of humanitarian assistance to Rwandan Hutu refugees. The members of the Team believe that some of the killings may constitute genocide, depending on their intent, and call for further investigation of those crimes and of their motivation.

As they read the report of my Investigative Team, the members of the Council will encounter one of the root causes of the recent conflicts in the Great Lakes region of Africa: a vicious cycle of violations of human rights and revenge, fuelled by impunity. This cycle has to be brought to an end if lasting peace and stability are to be restored to the region. Those guilty of violations must be brought to book; human rights need to be monitored closely wherever they are under threat; the efforts of Governments to build national capacities and to promote respect for human rights must be supported; and those members of civil society who foster a culture of tolerance should be assisted. The international community, and especially donor countries, have a prominent role to play in all of this.

In considering the attached report, members of the Council will no doubt wish to respond to it in a way that reflects their responsibility for the maintenance of international peace and security. Violations of human rights on such a scale as to constitute crimes against humanity must be regarded as posing a threat to international peace and security. At the same time, full weight must be given to the importance of consolidating the fragile stability in the region, which plainly requires a great deal of international assistance. It would, in my view, be a serious mistake if the international community were to turn its back on the countries concerned. What is needed is a consistent policy of critical engagement.

Ultimately, though, stability in the region lies with the Governments of the region. They have, above all, an obligation to respect the human rights and security of their own citizens. They can be assured of the goodwill of the international community, but they must also show that they are receptive to its concerns and mindful of their international legal obligations. This includes acknowledging and addressing the very serious findings of the Team, and taking appropriate action if members of their forces have been involved in any of the alleged violations.

I am sending a copy of the report of my Investigative Team to the Chairman-in-Office and the Secretary-General of the Organization of African Unity, with a request that it be transmitted, for their information, to the members of the International Panel of Eminent Personalities to Investigate the 1994 Genocide and Surrounding Events, from the Arusha Peace Accord of 4 August 1993 to the fall of Kinshasa on 17 May 1997.

In closing, I would like to pay tribute once again to the members of my Investigative Team, who have displayed the highest integrity, professionalism and courage throughout their difficult mission.

I should be grateful if this letter and its attachment could be circulated as a document of the Council.

(Signed) Kofi A. ANNAN

Annex

Report of the Secretary-General's Investigative Team charged with investigating serious violations of human rights and international humanitarian law in the Democratic Republic of the Congo

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Executive Summary

Obstacles encountered by the Investigative Team

After the vexations suffered by the members of the Team and the obstacles deliberately created to prevent the Team from properly fulfilling its mandate, it should be stated that the Government of the Democratic Republic of Congo had no intention of accepting the mission of the Secretary General's Investigative Team and that the Government merely made a show of willingness to co-operate with the Team.

It is true that there was a statement by the President of the Republic, and thereafter by a number of his ministers, to the effect that the Team would be entirely free to carry out its work without any interference throughout the country, but those were purely oral statements. The actions and reactions in the field were totally different. In short, the Government of the Democratic Republic of Congo did not want the investigative mission and, contrary to the provisions of the Secretary General's mandate of 15 July 1997 and the Annex thereto, failed to give it its full and entire co-operation.

Conclusion

These difficulties and obstacles make it impossible to confirm or disprove at this time most of the allegations that have been made concerning serious violations of human rights and humanitarian law during the period covered by its mandate. Nevertheless, the Investigative Team was able to confirm that certain types of violations occurred, and that they occurred in certain regions and during certain periods. In most cases, it is possible to arrive at general conclusions as to which forces participated directly in these incidents. The findings of the Investigative Team are based mainly on testimony provided to the Team directly and material evidence. The Team also took into account testimonies collected by other organizations, when sufficient information was provided about the identity of the declarant and the circumstances in which the declaration was made, and the information was corroborated by at least one other source. The conclusions adopted by the Team include the following:

- From mid-October to mid-November 1996, the AFDL and elements of the Rwandan Army (RPA) attacked camps in North and South Kivu containing refugees and, in most if not all cases, military elements hostile to the Government of Rwanda. The attacks caused many civilian casualties, but the Team did not obtain sufficient information to reach conclusions about the possible violations of humanitarian law resulting from the attacks on the camps as such.

- Hundreds of unarmed persons were captured and executed as a result of the attack on Mugunga camp in November 1996, and many unarmed civilians were hunted down and executed after fleeing from the attacks on this and other camps, including camps in South Kivu, Tingi-Tingi, Kasese and Obiro camps. These massacres were committed by the AFDL, in some cases with the participation of Mai-Mai militia; the extent of Rwandan Army (RPA) involvement is unclear. These killings violate international humanitarian law and, because of their systematic nature, may well constitute crimes against humanity.

- The AFDL also carried out a number of massacres of civilians in Zairian Hutu villages in North Kivu at this time, apparently because of the suspected sympathy or support for the fleeing Rwandan Hutus. These massacres likewise constitute serious violations of international humanitarian law.

- Zairian soldiers (FAZ), former Rwandan Army (FAR) soldiers and Interahamwe militia fleeing the AFDL offensive looted and killed unarmed civilians, violating international humanitarian law and, in the case of Zairian soldiers, international human rights law.

- In May 1997, hundreds of unarmed Rwandan Hutus were massacred in Mbandaka and the neighbouring village of Wendji by AFDL troops apparently under effective Rwandan Army (RPA) command.

- Forensic evidence indicates that bodies were removed from a mass gravesite in Mbandaka, corroborating testimony that an effort was made to 'clean up' such sites prior to the arrival of the Investigative Team.

- The AFDL forced large numbers of civilians to flee into scarcely populated areas in life-threatening conditions and denied relief organizations access to ill and wounded non-combatants, in camps and elsewhere, in violation of the duty to "collect and care for the sick and injured" recognized by Common Article 3 of the Geneva Conventions. The denial of humanitarian assistance to sick and injured displaced persons was systematic and may well constitute a crime against humanity.

- The attacks on camps in the North Kivu in 1996 were intended, in part, to force the residents to return to Rwanda, but the circumstances surrounding attacks on camps in the interior of the country in 1997, including the 'mopping up' operations carried out after such attacks and the massacre of persons trying to cross the border into the Republic of Congo, reveal the intent to eliminate those Rwandan Hutus who had remained in Zaire. One possible interpretation of this phase of the operations carried out by the AFDL with Rwandan support is that a decision was taken to eliminate this part of the Hutu ethnic group as such. If proved, this would constitute genocide.

- The Democratic Republic of Congo has shown no interest in fulfilling its obligation, under international law, to investigate responsibility for the serious violations of human rights and grave breaches of humanitarian law which occurred in its territory, before and after it came into power, and to prosecute those responsible. Consequently, the interests of justice can only be served by endowing an international tribunal with competence over these crimes. Failure to do so will encourage the perception of partiality on the part of the response of the international community to such violations, and nurture collective feelings victimization and of denial of justice, contributing to the cycle of reprisals and the culture of impunity.

Recommendations

The recommendations made by the Report include the following:

- The investigation should be continued by appropriate judicial body or, if conditions for completing the investigation with full and unrestricted access all relevant sources within the country come about, an investigative commission. Until such time, evidence and sensitive information obtained by the Team should be stored in a secure place in conformity with U.N. guidelines on inquiries into allegations of massacres.

- In the event that it is decided that conditions for completing the investigation without hindrance exist and a new investigative body is established, the investigation should focus on

- (a) massacres occurring during inter-ethnic fighting in North and South Kivu beginning in March 1993;

- (b) serious violations of human rights allegedly committed within the camps established in eastern Zaire during the period July 1994 to October 1996;

- (c) the extent of participation by Rwandan Army (RPA) in the military operations carried out by the insurgent forces beginning in October 1996;

- (d) the extent of participation by Rwandan and other foreign troops, including mercenaries, in the serious violations of human rights and humanitarian law which occurred during the armed conflict; and

- (e) the intent underlying the massacre of Rwandan and Zairian Hutus in Zaire beginning in October 1996.

- If the investigation is reopened, all neighbouring states and other states in possession of relevant information should be encouraged to co-operate by providing access to relevant documentary and other evidence.

- The international community should help the Democratic Republic of Congo to establish a judicial institution staffed by competent, independent and properly paid people who will apply internationally recognised rules of procedure. That institution should renounce all referrals to courts of special jurisdiction.

- The international community should support programs for the rehabilitation of victims of the war and human rights violations, giving priority to the most vulnerable, programs to reduce ethnic tension and promote respect for the essential dignity and equal rights of all persons and programmes to support the creation of an independent and impartial system of justice.

INTRODUCTION

1. On 17 April 1998, the Secretary General announced his decision to withdraw the Investigative Team that had been deployed to the Democratic Republic of Congo on 24 August 1997. The decision followed the detention of a UN investigator and seizure of documents in his possession on 8 April 1998 and was, in part, a response to this serious violation of the Convention on Privileges and Immunities of United Nations Officials. This incident marks the culmination of a broad pattern of non-co-operation and obstruction which hobbled the efforts of the Investigative Team to carry out its mandate since its arrival in the Democratic Republic of Congo 35 weeks before. The present report contains a record of such obstruction and non-co-operation, as well as an overview of the origins and mandate of the team, the activities carried out and the results obtained, and conclusions and recommendations. Annex I contains an overview of the allegations which the Team intended to investigate and more comprehensive summary of the information and evidence obtained.

I. BACKGROUND TO THE APPOINTMENT OF THE INVESTIGATIVE TEAM

1. Appointment of a Special Rapporteur by the Commission on Human Rights

2. On 9 March 1994 (resolution 1994/87), the Commission on Human Rights decided to appoint a Special Rapporteur to study the human rights situation in Zaire (now the Democratic Republic of Congo).[1] The Special Rapporteur, Mr. Roberto Garreton, has regularly reported on a worsening of the human rights situation of not only the Zairian populations, but also of displaced Rwandans in eastern Zaire. In April 1997, following serious allegations of massacres of Rwandan Hutus by the *Alliance des Forces Démocratiques pour la Libération du Congo-Zaire* (AFDL) in eastern Zaire, the Special Rapporteur visited the region and reported on massive killing of displaced Rwandans as well as members of the local population. He recommended to the Commission on Human Rights that a commission be established to investigate those incidents.

2. Establishment of the Joint Investigative Mission

3. On 15 April 1997, the Commission on Human Rights adopted resolution 1997/58 establishing a Joint Investigative Mission to "investigate allegations of massacres and other issues affecting human rights which arise from the situation prevailing in eastern Zaire since September 1996."

4. The Commission nominated three independent human rights experts to carry out the investigation: the Special Rapporteur on the situation of human rights in Zaire, the Special Rapporteur on extra-judicial, summary or arbitrary executions, and a member of the Working Group on Enforced or Involuntary Disappearances. On 3 May 1997, the Joint Investigative Mission, supported by human rights officers, a five-person forensic team and other UN staff went to Kigali, Rwanda, with the expectation that they would be able to enter eastern Zaire. However, the AFDL prevented the Joint Investigative Mission from entering Zaire. The AFDL raised several objections, the two most significant being (1) the rejection of Mr. Garreton as a member of the mission and (2) the demand that the time period covered by the investigation should be extended back to 1993.

3. Meeting of the Secretary General with President Kabila

5. On 3 June 1997, at the Organization of African Unity summit in Harare, Zimbabwe, the Secretary General of the United Nations and President Laurent-Désiré Kabila held a meeting in which they agreed on the importance and urgency of an investigation into reports of grave violations of human rights and international humanitarian law. Subsequently, President Kabila agreed to allow a United Nations investigation into the Democratic Republic of Congo in two stages; an advance team would arrive in the country on 20 June and would be followed by other members of the investigative mission on 7 July.

6. An eight-member advance team comprising human rights officers, other Secretariat staff and forensic experts arrived in Kinshasa on 20 June for talks on the practical modalities necessary for the investigation to be carried out. After ten days of negotiati ns, a draft *protocole d'accord* was prepared and a joint *communiqué* reflecting areas of agreement and areas where agreement could not be reached was signed by the two parties. The Government rejected Mr. Garreton's participation, and insisted that the time period for the investigation date from 20 March 1993 to 17 May 1997.

4. Appointment and Composition of the Investigative Team

7. The Team was composed of Mr. Atsu-Koffi Amega (Togo), Chief; Mr. Andrew Chigovera (Zimbabwe), Deputy and Mr. Reed Brody (United States), Deputy. Mr. Brody resigned in November 1997, and Mr. Chigovera resigned in February 1998. They were replaced by Messrs. Paul Laberge (Canada) and Daniel O'Donnell (Ireland and the United States), who were appointed in February 1998.

8. The support staff included a Coordinator, an Investigative Cell, a security unit and an administrative unit. The Investigative Cell included human rights officers, forensic experts and a police investigator who was responsible for the Information Management Unit. The number of human rights officers varied, reaching seven at peak strength. The forensic experts were not a permanent part of the Team, but were called when it appeared that exhumations would be possible, during the first and second deployments to Equateur Province. At maximum strength, the forensic team was comprised of six experts. In January 1998, the Team was reinforced by the secondment of a military analyst.

9. The difficulties encountered in carrying out the investigation caused a high rate of turnover. In addition to the resignation of the two Deputies, the Coordinator resigned in December, and was replaced in January. The Chief Investigator resigned in March, and was replaced ad interim by a human rights officer.

5. The mandate of the Investigative Team

10. The Secretary General's letter of 15 July 1997 defines the mandate of the Investigative Team as being to "investigate gross violations of Human Rights and International Humanitarian Law committed in the Democratic Republic of Congo (formerly Zaire) from 1 March 1993..." adding that "the Investigative Team's principle task being to collect and analyze information, testimony and other evidence in order to establish facts and responsibilities in gross violations." In closing, the letter emphasises that "the investigation will be conducted in accordance with the highest standards of objectivity, independence and impartiality and that the team will carry out its duties in the overriding and exclusive interests of truth, peace and reconciliation in the region." An Annex to the letter indicates that "the methods and techniques of the investigation will be based on the relevant international instruments on the subject, including the provisions of the United Nations Guidelines for the Conduct of Investigations into Allegations of Enforced Disappearance of 1992 and in the Principles on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions of 1989."

11. In August 1997, the Team adopted the following interpretation of its mandate:

According to the letter from the Secretary General to President Kabila, dated 15 July 1997, the relevant part of the Investigative Team's mandate is to:

"*Investigate gross violations of Human Rights and International Humanitarian law committed in the Democratic Republic of Congo (formerly Zaire) from 1 March 1993 and to report [to the*

Secretary General] by the end of December 199" The Investigative Team s principal task being to collect and analyse information, testimony and other evidence in order to establish facts and responsibilities in gross violations.

According to the letter from the Secretary General to President Kabila, the mandate was to cover:

a) *Ratione materiae*: allegations of gross violations of human rights, especially the right to life, resulting from extra-judiciary, summary and arbitrary, executions, from inhumane or degrading treatment and from massacres. In this context, evidence will have to be analysed in reference to article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide. As well, determination will have to be made in regard to the applicability of Principles VI (b) and (c) of the Principles of International Law recognised in the Charter of the Nuremberg Tribunal and in the Judgement of the Tribunal and the failure to respect the dispositions of article 3 common to the Geneva Conventions for the protection of war victims.

b) *Ratione loci*: the whole territory of the Democratic Republic of Congo.

c) *Ratione temporis*: the period from 1 March 1993 until the date of production of the report to the Secretary General.

d) *Ratione personae*: to the extent possible, the identity of anyone involved in gross violations of human rights and / or international humanitarian law having occurred in the territory."

6. Legal obligations of the *Democratic Republic of Congo*

12. The Democratic Republic of Congo is a Party to many international treaties concerning human rights, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of 1966, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1951 Convention on the Status of Refugees and 1967 Protocol; the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, the 1979 International Convention on the Elimination of All Forms of Discrimination Against Women and the 1989 Convention on the Rights of the Child. It is a Party to the four Geneva Conventions of 1949 and Protocol I, but not Protocol II, on non-international conflicts.

13. The term 'gross violations of human rights,' used by the Secretary General to define the mandate of the Investigative Team, is broad and flexible. In general, it is understood to encompass serious violations of the right to life and physical integrity. It may also include the infringement of other basic human rights, particularly if such violations are systematic and motivated by some form of discrimination prohibited by international law. For present purposes, the references to UN standards concerning executions, massacres and disappearances in the Annex to the Secretary General's letter clearly imply that violations of the right to life are central to the mandate.

14. The term 'gross violations of international humanitarian law' is similar to the term 'grave breaches,' which has a well-defined meaning. The Geneva Conventions define grave breaches as including 'willful killing, torture or inhuman treatment ... wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer,' deprivation of the right to a fair trial, taking of hostages and 'extensive destruction and appropriation of property, not justified by military necessity'.[2] Under these Conventions, all State Parties have a legal obligation to search for persons alleged to have committed or ordered grave breaches and either prosecute them or extradite them to a jurisdiction where they will be prosecuted.[3]

15. The Team's duty to investigate "in accordance with the highest standards of objectivity ... and impartiality" requires it to give equal attention to comparable events, regardless of the identity of the

perpetrator. This raises a technical legal issue, because most human rights experts hold the view that, since international human rights law is binding only on States, only actions committed by States, or which can be attributed to a State, can be considered human rights violations in the strict sense of the term. This is not the case with international humanitarian law, which applies to all parties to an armed conflict, even those which are totally independent from any State.

16. With regard to international humanitarian law another issue arises, namely, whether the conflict which broke out in 1996 should be considered as a non-international conflict. The conflict can be considered internal, or non-international, in that the forces aligned against the established government of then Zaire were under the leadership of the AFDL, which at that time was an insurgent movement whose main objective was to overthrow the existing government. Nevertheless, the parties concerned recognise that elements of the armed forces of at least one neighbouring country, Rwanda, participated actively in the conflict, largely in the pursuit of their own goals, in particular, that of eliminating a threat to the national security of Rwanda based on the presence of large hostile armed groups in the border areas. It is certain that the conflict had both national and international dimensions. There was, in effect, a convergence of two conflicts both of which were essentially internal - one between the AFDL and government of Zaire, the other pitting the Government of Rwanda against remnants of the former armed forces of Rwanda and the allied armed political militia, the Interahamwe, taking place largely in the territory of a neighbouring State. The two conflicts were closely intertwined, with the forces of the AFDL and Rwandan army, in particular, often acting as a single force. There is also some evidence of the participation of elements of the armed forces of other countries on the side of the insurgents, as well as that of mercenaries on the side of the then Government of Zaire, but many key questions about the nature and extent of foreign participation remain unanswered at this time. In short, the Team was not able to obtain sufficient evidence on the role of the foreign armed forces to determine whether the international aspect of the conflict was so predominant as to consider the conflict an international one, for purposes of international humanitarian law. Consequently, the standards applied for purposes of this report are those of Common Article 3 of the Geneva Conventions, which are applicable to all armed conflicts, internal as well as international. This Article prohibits arbitrary and indiscriminate killing, violation of physical integrity, degrading or inhumane treatment and the taking of hostages, and requires that the wounded and sick be "collected and cared for."

17. Given the potential breadth of its mandate, and the existence of the issues mentioned above concerning the applicability of international legal standards, the Team decided to adopt provisional operative guidelines concerning the scope of the investigation. These guidelines provided that efforts to obtain information on serious violations of human rights and international humanitarian law would focus mainly on the right to life, including summary and arbitrary executions, especially the massacre of groups of unarmed persons; deaths due to the conditions in which populations were forced to flee (e.g. from causes such as exhaustion, starvation, untreated illness, drowning), and deaths resulting from the use of civilians as shields.

18. With regard to other violations of physical integrity, the Team decided that priority should be given to rape and other forms of sexual violence, because it is a particularly egregious type of violation of physical integrity which also constitutes degrading and inhumane treatment. Other forms of torture were not identified as a focus of the investigation because, although deaths by methods which were cruel and inhumane were commonplace, allegations of torture in other circumstances as a separate or distinct human rights violation were not common.

19. A wide range of actors have been accused of committing massacres and other atrocities in the Democratic Republic of Congo during the period covered by the mandate of the Team, including the armed forces of the then Zaire and of Rwanda, the former armed forces of Zaire and of Rwanda, insurgent movements, tribal militias, militias linked to political parties and simple crowds of civilians.[1] The question of what international standards apply to such actors is not a simple one.

However, the Team's decision that the investigation should focus on violations of the right to life and physical integrity simplifies the issue somewhat, since there are strong parallels between international human rights law and humanitarian law in these particular areas. When the alleged perpetrator is a member of the armed forces or other official or employee of a State, the standards contained in human rights instruments are applicable. If the alleged perpetrator is a member of an insurgent movement, then international humanitarian law is applicable. International humanitarian law is also applicable to the armed forces of a Government which has been deposed as a result of an insurgency, if they continue to operate as a military force. In the event of acts committed by other actors, such as civilian population, the question which arises is whether they acted at the instigation of, or with consent or acquiescence of some public official or authority. If such a link can be established, then the act may constitute a human rights violation; if not, then it may be a simple criminal act, not falling within the Team's mandate.

7. Conditions for carrying out the investigation enumerated in the Secretary General's letter of 15 July 1997

20. The Annex to the letter of the Secretary General specifies that the members and staff of the Team enjoy the privileges and immunities set forth in the 1946 Convention on the Privileges and Immunities of the United Nations, ratified by the DR Congo in 1964, noting expressly that such privileges and immunities "shall also apply to all documents and material evidence compiled or collected during the investigation." The Annex also lists nine commitments made by the Government pertaining to the conduct of the investigation. In summary form, they are:

a. to guarantee the security of all members of the team;
b. to ensure the security of the team's premises and installations;
c. to "spare no effort, if the security situation should temporarily hinder freedom of movement or investigation, to establish conditions that will enable the team to discharge its mandate in full";
d. to guarantee free access to all places in the national territory that the team wishes to visit;
e. to guarantee free access to all sources of information;
f. to protect all sites of massacres and common graves in order to preserve evidence;
g. to allow private, confidential communications with witnesses;
h. to "guarantee that witnesses and other persons, whether Congolese or foreigners, with whom the Team makes contact, will not be exposed as a result to threats, harassment, punishment or judicial proceedings"; and
i. to "facilitate the entries and departures of the Team staff and equipment, particularly at frontier posts."

II. OBSTACLES ENCOUNTERED BY THE INVESTIGATIVE TEAM

A. August-October 1997

21. Relations between the Team and the Democratic Republic of Congo Government were extensively marred by difficulties created both by the Government and by non-governmental bodies. Obstacles cropped up throughout its visits to the country. By means of ambiguous, if not contradictory, messages, through the press and by means of sophisticated arguments the Government strove to undermine the assurances it had given to allow the mission to take place. In particular, it raised objections to the composition of the Team, the scope of its mandate, the integrity and impartiality of its leader and the violation of the territorial sovereignty of the Democratic Republic of Congo. The Government also arrested and intimidated potential witnesses. A demonstration by the *Comité des forces vives* challenging the Investigative Team's presence in the country was staged in Kinshasa on Saturday, 30 August 1997. The various features of the Government's obstructive strategy are discussed below in chronological order.

22. By letter dated 18 August 1997, the Minister of National Reconstruction and Emergency Planning informed the Secretary General that the Democratic Republic of Congo Government was not prepared to grant admission to the four United Nations staff responsible for the Team's security, since the Government had undertaken to see to that itself. He also claimed that the list of Team members had not been submitted on time, i.e. ten days before the Team arrived in Kinshasa, so that the Government's identification services could make arrangements for the Team to enter Congolese territory.

23. On 27 August 1997, after the Team's arrival in Kinshasa, the Congolese Government sent a letter to the Secretary General expressing the hope that the United Nations commission could conduct its inquiries at the same time as an OAU commission; it again objected to the presence of security staff on the Team and demanded that they should be replaced before the commission was set up. Arguing that Togo, from where Mr. Atsu-Koffi Amega came, had had links with the Mobutu regime, the Government also demanded Mr. Amega's replacement by someone from a "neutral" State. These objections came on the same day that the Team applied in writing for a meeting with the Congolese authorities to discuss the modalities of their co-operation. The Minister of National Reconstruction and Emergency Planning telephoned in reply, setting up a meeting at the Intercontinental Hotel for the afternoon of 28 August. But given the Government's objections, and learning that a press conference had been called for the same day at the same venue and time, the Team declined the invitation.

24. At that press conference, the Minister of National Reconstruction and Emergency Planning, Etienne-Richard Mbaya, flanked by his colleagues, Celestin Lwangi from Justice, Jean-Baptiste Sondji from Health, Mwenze Kongolo from the Interior, Bizima Karaha from Foreign Affairs, Thomas Kanza from International Cooperation and Raphael Ghenda from Information, Press and Cultural Affairs, vehemently reiterated the Government's objections. In essence, he stated that

- in his letter dated 11 August 1997 the United Nations Secretary General had given the Congo a list of 27 team members among whom were four responsible for security. That was a flagrant violation of the terms of the protocol dated 30 July 1997 between Democratic Republic of Congo and the United Nations advance team;

- the agreement to transmit the list of Investigative Team members ten days before they arrived in Kinshasa had not been respected;

- the Democratic Republic of Congo Government demanded that the United Nations commission should conduct its inquiries at the same time as an OAU commission, in accordance with a verbal agreement between the United Nations Secretary General and the Congolese Head of State at the Conference of Heads of State and Government of OAU held in Harare in June 1997;

- the current situation in Kivu, at Masisi and Kalehe especially, made it impossible for the Democratic Republic of Congo Government fully to honour its commitments on security in that region.

25. Yet on 1 and 11 August 1997 the Secretary General had written to President Kabila telling him of the composition of the Team, and had not been told of any objection to the appointment of Mr. Atsu-Koffi Amega as Team leader. He had also made it plain that it was customary to assign staff to United Nations missions to liaise with local security agents and perform communications and logistical functions.

26. In a letter to President Kabila dated 29 August 1997, the Secretary General firmly rejected the conditions imposed by the Democratic Republic of Congo Government, emphasising that they "could only be interpreted as reticence on [the Government's] part to accept the investigation (...)". "Promises have been made and assurances given, and now an attempt is being made to go back on those promises and assurances," he added. The Secretary General therefore indicated that if the Congolese authorities did not allow the mission to begin work by midday (local time) on Tuesday, 2 September 1997, at the latest, the mission would be withdrawn and the Security Council informed.

27. On Monday, 1 September 1997, in a telephone conversation with the Secretary General, the Minister for Foreign Affairs, Bizima Karaha, said that the Government was withdrawing its objections. The Secretary General asked to be given that assurance in writing. At 22h30 on 3 September 1997, the Team received a letter signed by Minister Etienne Richard Mbaya inviting it to a meeting the following morning, 4 September, at 9h30. At that meeting, the first fifteen minutes of which were covered by the press, Mr. Mbaya rejected the interpretation of the Secretary General's conversation with Mr. Karaha, adding that the mission would not be getting the letter promised by the Minister for Foreign Affairs since the conditions laid down in the previous letter from him and Mr. Kongolo to Mr. Amega still reflected the Government's official position.

28. Mr. Kongolo and Mr. Mbaya also sev.rely criticized the Team for violati g Congolese national sovereignty by failing to respect the agreement between the United Nations and their Government between the official announcement and arriving in the country, by entering "illegally" and by bringing security officers into a country at war. Mr. Mbaya criticized the Team for having a political mandate when the investigation ought to be of a technical nature.

29. Diplomatic exchanges took place between the Secretary General and Democratic Republic of Congo authorities between 4 and 10 September to try to break the deadlock.

30. On 4 September the Secretary General renewed his request for clarifications of the Government's position so that the mission could begin work by midday on Saturday, 6 September 1997, at the latest, failing which he would be obliged to call it off.

31. On 6 September, President Kabila replied to the Secretary General, repeating that his Government accepted the principle of a United Nations investigation in the east of the country. He remarked with regret, however, that the commission had violated Congolese sovereignty and meddled in the country's domestic politics by "engaging openly in talks with the so-called political opponents." He emphasised that two of the Secretary General's letters (those dated 29 August and 4 September) contained ultimatums, which was unacceptable to a sovereign, independent Government.

32. On 8 September, Mr. Amega sought a meeting with the Minister of National Reconstruction to convey to him the Team's wish to pay its first visit to the field (planned for 11 September) and discuss co-operation with the Government.

33. On 10 September, the Minister of National Reconstruction and Emergency Planning called the Team to a meeting on 11 September with the Inter-ministerial Liaison Committee to discuss the modalities of co-operation with the Government. The Team had three meetings on 11 and 12 September, during which it found that besides the initial objections there were now fresh differences of opinion. These concerned the physical extent of the investigation, its duration, the role of the liaison committee, and the resources to be made available to that committee. The positions of the two parties can be summarised as follows:

1. Physical extent: the Team's position was that the investigation should cover the entire country; the Government wanted it limited to the east of the country only;
2. Period covered: while the Team maintained that its mandate covered the period from 1 March 1993 to 31 December 1997, when it submitted its report, the Government, in an interview given in front of the press on 16 September 1997, indicated that the period covered ran from 20 March 1993 to 17 May 1997;
3. Duration: although the mandate called for the Team to report on 31 December 1997, the Team thought this date was merely an indication and would depend on how the investigation progressed. The Government said that the date was binding;
4. Role of the liaison committee: in the Team's view the word "facilitate" used in the mandate ruled out any involvement at any stage of the investigation. The Government understood it in the opposite sense;
5. Budget of the liaison committee: the Team had not expected a budget to be submitted, since under its mandate it was merely supposed to provide the Inter-ministerial Liaison Committee with the logistical facilities and equipment it needed.

34. On learning of the continuing disagreements with the Congolese Government, the Secretary General wrote to President Kabila on 12 September 1997 looking for common ground. He also encouraged the Team to request permission to deploy in the Mbandaka region beginning on 17 September so as to start its investigations in the field. But at a meeting on 15 September the Minister of National Reconstruction and Emergency Planning turned down that request and accused the Team of continuing to violate Congolese national sovereignty and hampering the investigation by its attitude. In a press statement he reaffirmed that the Government's positions had not budged.

35. Finding himself unable to overcome the obstacles raised by the Congolese Government, the Secretary General decided on Wednesday, 1 October 1997, to recall the Team to New York for consultations pending a clarification of Democratic Republic of Congo policy, while the support staff remained in Kinshasa. The Team left the Democratic Republic of Congo capital on the evening of Friday, 3 October.

36. On 5 October 1997 the Minister of the Interior, Mwenze Kongolo, told the press that the Investigative Team's "insistence" on going to Mbandaka was prompted by its desire to go and meet around one thousand ex-FAR (former Rwandan Army) soldiers hiding in the forest and holding a great many refugees hostage in Equateur Province. "There is reason to believe that this commission prefers going and doing deals with our weapon-toting enemies hiding in the forest to honouring the undertakings given in the joint protocol of agreement with the Government," the Minister elaborated.

37. A number of statements to the press by the Congolese authorities sought to establish a link between the presence of the Team in Kinshasa and the conflict in the Republic of Congo. On occasion the authorities claimed that the international community and the United Nations were picking on the Democratic Republic of Congo rather than concern themselves with the situation in the Republic of Congo.

38. On Saturday, 30 August 1997, a demonstration against the presence of the mission of investigation was mounted by a committee calling itself the "*Forces vives pour l'eveil du nationalism congolais*" ("Life-forces for the awakening of Congolese nationalism"). This seemingly spontaneous gathering of about 5,000 people had been arranged in anticipation of the mission, to judge by the efficient organization and the nicely-printed banners on which, as the procession passed in front of the Intercontinental Hotel in Gombe district, where the Team were living, the following slogans were to be read: "No to the UN", "No to Koffi Amega, the corrupt Mobutist", "No to the xenophobe Kofi Annan", "No to the Commission of Inquiry manipulated by foreign powers."

39. In a letter to the Secretary General, a copy of which was given to the United States Ambassador to the Democratic Republic of Congo, the Committee, claiming to speak for the Congolese people, took up the Government's arguments regarding the supposed violation of the protocol of agreement and the partiality of the Team leader: "The Congolese People wishes to voice its reservations as to the reliability and objectivity of any conclusions the Commission might reach."

40. Receiving the demonstration at the *Palais du Peuple*, President Kabila pretended to be surprised by a movement he described in his speech as spontaneous, then went on to denounce in vague terms the meddling in the Congo's domestic affairs by foreign powers. The Team was not, in fact, identified by name, but the President's remarks were also indirectly aimed at it, which was perceived as the channel linking the claims of the domestic opposition to the external intervention.

B. November-December 1997: Return and deployment to Mbandaka

1. Reasons for the deployment

41. The Team returned to Kinshasa on 11 November 1997, and began to plan its deployment to Equateur Province. Information from several sources indicated that several hundred Rwandans who had fled the eastern Zaire after the attacks on the camps there were killed in the city of Mbandaka and the neighbouring village of Wendji in May 1997. Although the number of victims in this region was small compared to the total number of persons allegedly killed during and after the attacks on the camps, there were several reasons for deciding to begin the investigation in the field here. The allegations concerning the circumstances of the killings were unequivocal, in particular with respect to the identity of the forces responsible and the circumstance that the victims were unarmed. Unambiguous information about the location of mass graves was available and, in contrast to the eastern provinces, there were no reports of fighting in the area.

42. Time-consuming negotiations concerning the modalities of deployment and delays in obtaining the necessary travel documents resulted in a three-week postponement of the first deployment outside Kinshasa. Reports were received that, during the second half of November and first week of December, military and civil authorities undertook efforts to erase traces of mass graves. On 8 December, investigators were finally able to travel to Mbandaka.

2. Obstacles leading to the withdrawal of investigators from Mbandaka

43. On arrival in Mbandaka during the second week of December 1997, investigators were met with demonstrations against the Investigative Team and the UN in general. The authorities called these demonstrations "spontaneous", but there was ample evidence that they were, in fact, organised by government authorities. The banners used by the demonstrators were printed in Kinshasa, and were transported to Mbandaka by the very governmental liaison officers responsible for facilitating the work of the Investigative Team. Upon arrival in Mbandaka the banners were given to local governmental officials who, in turn, distributed them to the local population and incited them to protest against the Team.

44. A second demonstration against the Investigative Team took place in Mbandaka, and two demonstrations took place in the village of Wendji. The latter focused on demands that payments in cash and in kind be made before interviewing members of the local population. The final demonstration took place outside of the Team's temporary base in Mbandaka. The local government controlled radio had broadcast information to the effect that, if the population reported to the Team's base, the United Nations would reimburse them for damages (e.g. stolen property, etc.) resulting from the passage of the refugees in 1996. When some of the crowd learned that this information was completely unfounded they became hostile, yet the police officers present made little or no effort to

disperse the crowd. The Team's head of security decided to evacuate the investigators, due to the risk of an escalation which could endanger their physical safety.

45. On 19 December a letter was sent to the Head of the Inter-ministerial Liaison Committee, describing in detail the various obstacles encountered by the Team, drawing attention to fact that these conditions were incompatible with the guarantees listed in the Secretary General's letter of 15 July 1997 and demanding that the Government reaffirm its willingness to take certain measures necessary for the Team to carry out its mandate. The reply of the Minister called the Team's complaints unfounded. In addition to denying the accuracy of the Team's version of events and refusing to offer assurances regarding non-interference with its work, the letter even accused the Team of advocating human rights violations. The Liaison Committee declared that it would be 'anti-democratic' to interfere with the demonstrations against the Team, and 'cultural genocide' to oblig. the local population to permit the Team to carry out its work without complying with supposed local traditions. In a telling phrase, the Minister declared that "the Government gave undertakings concerning the principles of the investigation and not concerning the modalities of feasibility or practicability."

C. January-March 1998: Return to Mbandaka

1. Difficulties in obtaining testimony from witnesses

46. In January, the Minister who headed the Inter-ministerial Liaison Committee was transferred to a different Ministry, creating uncertainty as to who was responsible for liaison with the Team. This caused a delay of nearly one month in obtaining authorisation to return to Mbandaka. When investigators were finally able to return, on 8 February, a pattern of intimidation of actual and potential witnesses soon became apparent. Local officials visited areas that the investigators planned to visit in advance of their arrival, and warned the population not to talk with them. Plain-clothes agents constantly followed investigators, and individuals who spoke with investigators were invariably interrogated by intelligence or law enforcement officers, creating a situation in which the population was very reluctant to have any contact with the investigators. The three most important cases of intimidation and interference which marked this deployment can be summarised as follows:

47. On 16 February, an investigator made an appointment with a priest for the following day. The next morning the priest was arrested and brought in for questioning by the *Agence Nationale de Renseignement* (ANR) and interrogated the whole day, thus preventing him from meeting with the investigator. The interrogation continued for some days but the authorities denied that it was related to the Team's contact with the priest.

48. On 21 February, an investigator visited a local journalist at his home. Shortly thereafter, a man dressed in plain clothes entered the house, accused the investigator of committing a 'suspicious act' and demanded that she identify herself, while at the same time refusing to identify himself. Other officers arrived and demanded that the investigator accompany them. The investigator refused and returned to the Team's base, without having been able to conduct the interview. The journalist was taken into custody for questioning the following day and after his release, he went into hiding. His wife refused to inform the UN investigators of his whereabouts, and accused them of having caused his arrest. The journalist reportedly had been threatened with death. He returned home some weeks later. The official explanation for his interrogation is that he published a defamatory article concerning the Governor.

49. A *Note Verbale* was sent to the Government on 26 February 1998, stating that the Team was 'seriously concerned' about these incidents, which were incompatible with the guarantees enumerated in the Secretary General's letter of 15 July 1997. More generally, the Note demanded an end to the constant shadowing of investigators, which "had created a climate of distrust and fear among the general public, restricting the Team's availability to work with the requisite confidentiality and

independence." A reply was received on 6 March. Rather than providing the assurances requested, the Minister declared that the interrogation of the two potential witnesses had nothing to do with the (Team's) investigation and accused the investigators of "wanting to interfere in our State's internal affairs instead of dealing properly with the tasks entrusted to them by your mandate ..."

50. The third incident involved the Congolese Red Cross. On 27 February a meeting between an investigator and several members of the local Red Cross was interrupted by the Chief of Police, who informed the investigator that he had no right to be there and, with threatening gestures, ordered him to leave. A *Note Verbale* protesting this interference with the work of the Team was sent on 3 March, but no reply was ever received.

51. These measures were quite effective in intimidating the population. Given the paucity of testimonies and the Team's growing concern for the safety of persons approached by it, it was decided to end the search for testimonies in Equateur and concentrate on the exhumation of suspected mass gravesites.

2. Difficulties affecting forensic work

52. A forensic team arrived in the Democratic Republic of Congo on 10 March 1998. Permission to travel to Mbandaka was received six days later. Upon arrival in Mbandaka, an additional day was lost in waiting to meet the Governor, who insisted on meeting the new arrivals before work began.

53. On 18 March, the forensic team visited a site in the village of Wendji, located some 20 kilometres from Mbandaka. The site matched closely the descriptions given by two witnesses. An exploratory examination was made of one of the suspected mass graves located within the site, producing evidence that one or more bodies had been located in the grave for several months, but had been removed. Having confirmed that the site contained at least one mass grave, the forensic team withdrew, planning to return the next day to clear and map the area in preparation for beginning the exhumation. The Team's field security officer met with the village chief and discussed the hiring of labourers to help the team in its work.

54. The following day, investigators were prevented from returning to the village by a crowd of several hundred persons armed with spears, machetes and similar weapons, who claimed that the Team had profaned a cemetery and stolen the bodies of a chief and a child. The Governor came to the village, at the request of the Team, and offered to mediate. Negotiations began the same day and continued until nightfall. The villagers demanded a written apology for the purported desecration of the graves of the chief and child and the return of their remains. It was impossible to meet this demand, since such an admission would have been contrary to the facts. The Governor advised the Team that it could not return to the site until negotiations with the villagers reached a successful conclusion, but assured the Team that it could work elsewhere in the province.

55. The following day, however, the police prevented the forensic experts from visiting another suspected mass gravesite located near Mbandaka. Later that afternoon, the Governor insisted that negotiations with the villagers continue and stated that, unless a compromise acceptable to the villagers was reached, he could not guarantee the security of the investigators anywhere in the province. This statement was made in the presence of the police, the army and local agents of the intelligence service, as well as the same individuals who had led the armed demonstration the previous day. Given the implicit threats to the security of the investigators and the impossibility of continuing forensic work in such circumstances, the Team decided to withdraw from Mbandaka and concentrate its efforts on the eastern provinces.

56. When the decision was taken to discontinue efforts to investigate in Equateur Province, ten weeks remained before the end of the mandate. Deeply concerned that it would be impossible to carry

out a reasonably comprehensive investigation in the time remaining unless there was an end to administrative delays, hostile demonstrations and similar incidents, the Team requested a meeting with the responsible Ministers. One week later, a reminder was sent. A reply was still being awaited when the next serious incident occurred. Although the Government did not reply to the *Note Verbale*, senior government officials repeated the unfounded allegations regarding the purported violation of the tombs of a chief and child on national television.

D. March-April 1998: Deployment to Goma

1. Reasons for the deployment, commencement of work and initial difficulties

57. The Team decided to deploy to Goma, the capital of North Kivu province, because the province was the scene of some of the many reported massacres alleged to have occurred in 1996 and 1997 and because security conditions there, while problematic, were not as bad as those in South Kivu. When the Team arrived, on 19 March 1998, there were signs that the pattern of delays and intimidation that had characterised the two deployments to Mbandaka might be repeated. It was necessary to wait nearly one week to meet the Governor, and both intensive shadowing of staff and routine interrogation of persons having had contact with them occurred. At least one witness went into hiding as a result of such interrogation. On 24 March, an interview with the UNDP representative in Goma, a national officer, was interrupted by an urgent summons asking him to report to the provincial offices of the ANR, where he was questioned until evening. The next day the long postponed meeting with the Governor finally took place and a strong protest concerning such practices was made.

58. The protest appeared to have some impact, but soon after witnesses began coming to the Team's office for interviews, it became obvious that many were being shadowed and in some cases routinely interrogated by the ANR. Although aware of this risk, dozens of people continued to visit the offices to talk to the Team about what they knew or had witnessed during the period of the Team's mandate.

2. The expulsion and detention of an investigator and seizure of documents

59. On Sunday, 29 March, an investigator who was a former staff member of the UN Human Rights Field Operation in Rwanda crossed the border into Gisenyi, Rwanda, on a private visit. Having a visa for the Democratic Republic of Congo in his UN Laissez-Passer and a visa for Rwanda in his national passport, he presented both documents to Congolese immigration officials, who put an exit stamp in the former. Nevertheless, shortly after entering Rwanda, he was approached by Congolese authorities who asked him to return to their office "to answer a few questions." On doing so, he was held incommunicado for approximately 3 hours. The authorities seized his UN Laissez-Passer and national passport, as well as the Congolese travel document issued to staff of the Team.

60. One of the Deputy Heads of the Team met with the Vice-Minister of Interior in charge of Public Order and Security to request the return of the investigator's documents, but was informed that the matter had been referred to the President's office in Kinshasa. In Kinshasa, the Head of Mission contacted various authorities, including the Head of President's Cabinet, but was unable to obtain satisfaction. During this time, the investigator continued working in Goma. The only explanation for the seizure of the documents provided was that the use of the two travel documents was "suspicious."

61. On Tuesday, 7 April, at 11h30, an immigration official told the investigator that he must leave on the 14h00 flight to Kinshasa. Various approaches to senior Congolese officials in Kinshasa were intensified in the hours before his expulsion from North Kivu, to no avail. The investigator's passport and UN Laissez-Passer were returned to him in Goma, but seized again upon arrival in Kinshasa, where he was detained in the airport by the Agence Nationale de Renseignements (ANR), the National Intelligence Agency.

62. The investigator spent the night at the airport, accompanied by U.N. security officers who were obliged to physically prevent his luggage from being seized. At one point, government officers drew their guns. Exchanges with the government officials indicated that their main interest was in obtaining the documents and computer disks, that contain highly sensitive information, including witness statements. At around 5h30 on 8 April, the investigator was moved into a small locked room and UN documents and diskettes were removed from his luggage. The documents, but not the diskettes, were returned to his luggage at around 10h00. At mid-day he was transferred to the ANR headquarters. UN security officials were not advised where he was being taken, and were prevented from following. The investigator was kept incommunicado until his release at 16h15. The Congolese authorities made photocopies of the UN documents.

63. Interrogation of persons having had contact with the Team, including UN personnel, continued after the investigator's expulsion from Goma.

III. RESULTS

A. Results of the investigation within the Democratic Republic of Congo

64. The number of testimonies obtained by the Team during the 35 weeks between its arrival in August 1997 and departure in April 1998 is very small. Less than twenty testimonies were obtained in Goma, and a similar number in Mbandaka. In Mbandaka, the vast majority of the testimonies concerned rapes and violence committed by the Rwandans as they fled through the region; only a small handful of individuals were willing to provide information about the massacres which followed. Fewer than ten testimonies were obtained in Kinshasa.

65. In all, less than two hundred testimonies were recorded by the Investigative Team, including those registered by the forensic experts in their 1997 report on Eastern Zaire.

66. The forensic team, despite having spent over one month in the country, was only able to make a preliminary investigation of one site during the course of one afternoon. This work nevertheless produced important findings, confirming that an effort had been made to remove bodies that particular site.

B. Testimonies obtained as a result of missions to neighbouring countries

67. Given the difficulties encountered in trying to carry out the investigation in the Democratic Republic of Congo, four missions were made to neighbouring countries to interview witnesses: two in the Republic of Congo, one in the Central African Republic and one in Angola.

68. The first mission to the Republic of Congo took place from 9 to 12 September 1997. Two investigators visited a refugee camp, and approximately twenty-five testimonies were obtained.

69. A second mission to the Republic of Congo took place from 26 to 30 January 1998, while the Team was awaiting authorisation to deploy investigators within the Democratic Republic of Congo. Over forty testimonies were received during visits to two refugee camps.

70. A mission to the Central African Republic took place from 8 to 14 February. Two investigators participated, collecting some twenty-five testimonies.

71. The mission to Angola took place from 9 to 16 March. During the mission two investigators gathered some twenty testimonies from witnesses in a refugee camp.

C. Information received from other sources

72. In addition to the small number of testimonies obtained in DR Congo and in neighbouring countries from direct witnesses to events coming within its mandate, the Team also received important information in the form of documents, photographs, recordings and notes of interviews. The sources include Congolese organisations and foreign nationals present in the country during all or part of the relevant period of time, including journalists, diplomats and other credible sources. The credibility of such information has been carefully evaluated by the Team. To the extent such information is original, i.e. not previously published, and meets accepted standards for credibility, such information has been registered and will be preserved in strict confidence until such time as it is possible to undertake a full, unhindered and impartial investigation of the events coming within the mandate of the Investigative Team. Information obtained from public sources which is considered credible has been used only in preparing the part of the Report containing a summary of allegations.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

1. Failure of the Government of the Democratic Republic of Congo to ensure conditions necessary for the successful completion of the Investigation

73. After the vexations suffered by the members of the Team and the obstacles deliberately created to prevent the Team from properly fulfilling its mandate, it should be stated that the Government of the Democratic Republic of Congo had no intention of accepting the mission of the Secretary General's Investigative Team and that the Government merely made a show of willingness to co-operate with the Team.

74. It is true that there was a statement by the President of the Republic, and thereafter by a number of his ministers, to the effect that the Team would be entirely free to carry out its work without any interference throughout the country, but those were purely oral statements. The actions and reactions in the field were totally different. In short, the Government of the Democratic Republic of Congo did not want the investigative mission and, contrary to the provisions of the Secretary General's mandate of 15 July 1997 and the Annex thereto, failed to give it its full and entire co-operation.

75. It became clear to the Team that there is a profound gulf between the Government of the Democratic Republic of Congo and the United Nations, which the Government accuses of having been at the origin of all its problems since independence in 1960, with the result that "national sovereignty and dignity" are Government leitmotifs. The Government's sometimes hostile attitude to certain international humanitarian organisations is symptomatic of the situation. This attitude is consistent with the refusal of the Government to fully co-operate with the Team.

76. Although it was not possible to confirm or disprove most of the allegations that have been made concerning serious violations of human rights and humanitarian law during the period covered by its mandate, the Team was able to reach the conclusions set forth below. The scope of the conclusions is limited. For the most part, the Team was able to confirm that certain types of serious violations did occur, that they occurred in certain regions and during certain periods. In most cases, it is possible to arrive at general conclusions as to which forces participated directly, and in a few cases information was received as to the identity of specific individuals or military units. It has not been possible, as a rule, to quantify these violations, that is, to determine with a reasonable degree of certainty the number of victims, or even the number of specific types of violations, such as massacres. Often, the

information received comes from a small number of sources, who in many cases, but not all, were victims themselves. Corroboration by testimony of impartial witnesses and forensic evidence would be necessary to arrive at a more complete and accurate understanding of what happened during these five years. The co-operation of military and political leaders in the Democratic Republic of Congo, Rwanda and possibly elsewhere, and access to public records, would be necessary to arrive at more specific conclusions as to responsibility for the violations which took place. The conclusions set forth below clearly demonstrate the need for further investigation, and the direction which such investigation should take.

2. Events occurring between March 1993 - October 1994

77. In 1993, violence broke out between ethnic groups in the Masisi area of North Kivu. However, the Team is unable to draw any conclusions as to the number of victims, or the identity of those responsible.

78. During the period July 1994 to October 1996, some of the Rwandan Hutus who sought refuge in North Kivu and resided in camps in the Goma area committed crimes, including homicide, against members of the local population. Law enforcement had broken down, and no effective action was taken to identify and prosecute the perpetrators.

79. Cross-border attacks on the camps in Zairian territory occurred, in North and South Kivu, in 1995 and 1996. These attacks resulted in an unknown number of deaths among the civilian residents of the camps, as well as the Zairian security forces which guarded the camps. The number of such incidents, number of victims and identity of the attacking forces is not known.

3. Events occurring in October and November 1996

80. Camps established with the support of UNHCR in North and South Kivu were systematically attacked by military forces during the period from mid-October to mid-November 1996. The population of many of the camps included both unarmed refugees and armed soldiers and militia. The attacks caused heavy casualties among the civilian population. In some cases, unarmed persons, including women and children, were deliberately executed during these attacks. In Mugunga camp, hundreds of unarmed persons were captured and executed. AFDL troops played a leading role in attacks on the camps, and the senior officials of the Government of Rwanda have publicly admitted that Rwanda participated in these operations.

81. The attacks on these camps caused hundreds of thousands of Rwandan Hutus to return to Rwanda, and hundreds of thousands to flee into the interior of Zaire. Many of those who fled were hunted down and deliberately killed by AFDL forces and Mai-Mai militia. In one case, AFDL troops killed a number of wounded Rwandan Hutus in a hospital. The extent of Rwandan participation in the killing of fleeing camp residents has not been sufficiently documented.

82. During this period, a series of massacres of civilians in Zairian Hutu villages in North Kivu began, apparently because of the suspected sympathy or support for the fleeing Rwandan Hutus. These massacres continued until March 1997, at least.

83. Deliberate killing of unarmed persons took place in connection with the capture of Goma by the members of the AFDL. Victims included men suspected of being deserters from the Zairian Army (FAZ) and civilians.

84. Zairian soldiers fleeing the fighting looted and in some cases killed unarmed civilians.

85. Former Rwandan Army (FAR) soldiers and Interahamwe militia fleeing attacks on the camps also looted and killed unarmed civilians.

4. Events from December 1996 to May 1997

86. During February, March and April, a number of camps set up in the interior of the country to receive those who had fled the attacks on camps in North and South Kivu were attacked. Tens of thousands of Rwandan Hutus disappeared as a result of the attacks on Amisi, Tingi-Tingi, Kasese, and Obilo. AFDL troops deliberately killed groups of unarmed civilians fleeing the attacks. The number of victims and extent of Rwandan participation in the attacks is unknown.

87. In May 1997, Rwandan Hutus were massacred in Mbandaka and the neighbouring village of Wendji. The victims were unarmed, and numbered in the hundreds. The massacre was committed by AFDL troops, apparently under effective Rwandan Army (RPA) command.

88. The killing of both Rwandan and Zairian Hutus by the AFDL and Mai-Mai in North and South Kivu continued during this period. In April, AFDL troops removed a number of unaccompanied Rwandan Hutu minors and their adult caretakers from a hospital in Lwiro, South Kivu, where the children were receiving treatment for malnutrition. They were detained in sub-human conditions and beaten.

5. Destruction of evidence

89. Forensic evidence indicates that bodies were removed from a mass grave site in Mbandaka, corroborating testimony that an effort to 'clean up' such sites took place just before the Investigative Team's first deployment in that area. The extent to which this occurred in other regions has not been sufficiently supported, although numerous credible reports strongly suggest that such efforts took place.

6. Conclusions concerning the violation of international human rights and humanitarian law

a) Human rights violations committed by the Zairian Army (FAZ)

90. The looting and killing of civilians by retreating Zairian soldiers after the beginning of the AFDL offensive until the seizure of power by the AFDL in May 1997 constitute serious violations of the right to life and property, protected under human rights treaties ratified by Zaire as well as the Universal Declaration of Human Rights. The killings, in particular, also violate international humanitarian law, as indicated below.

b) Massacres committed during inter-ethnic violence

91. The fighting among ethnic militias which broke out in North and South Kivu in 1993 was sufficiently serious to trigger the application of Common Article 3 of the Geneva Conventions, ratified by Zaire, which applies to non-international armed conflicts. Consequently, the deliberate massacre of unarmed civilians by such groups during that period can be considered a serious violation of international humanitarian law.

c) Killings of civilians during attacks by the AFDL on camps

92. The deliberate execution of unarmed civilians during and after the attacks on camps of displaced Rwandans by AFDL troops also violates Common Article 3 of the Geneva Conventions.

d) Other serious violations of humanitarian law committed by the AFDL

93. The AFDL was also responsible for other violations of international humanitarian law, including the detention of malnourished children being treated in a hospital, killing of wounded patients in another hospital, the beating and killing of nurses in those hospitals, denial of access by relief organisations to camps for displaced persons containing large numbers of ill and wounded persons and the failure to "collect and care for the sick and injured," in violation of Common Article 3.

e) Killings by militia during the 1996 armed conflict

94. The killings of unarmed civilians by Interahamwe and Mai-Mai militias during the armed conflict, which broke out in October 1996, likewise constitute serious violations of international humanitarian law.

f) The commission of crimes against humanity

95. The available information strongly suggests that at least the massacres committed by the AFDL and its allies during the period October 1996 to May 1997 and the denial of humanitarian assistance to displaced Rwandan Hutus were systematic practices involving murder and extermination, which constitute crimes against humanity, as defined by the Statutes of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda.

g) The nature of the massacres

96. When the camps in North Kivu were attacked in October and November 1996, it is clear that one of the objectives was to force the refugee population in the camps to return to Rwandan territory. To some extent the return was voluntary, since many genuine refugees had been prevented from returning by the military elements in the camps. However, it also is clear that, at some times and in some areas, the attacks on former camp populations which fled westward into the interior of Zaire were not intended to force them to return, but simply to eliminate them. This is clearest in the massacre at Wendji and Mbandaka, when a large number of Rwandan Hutus at the border of a third country, the Republic of Congo, were systematically killed just as many of them were trying to flee. Some evidence suggests that the objective of physical elimination of the Rwandan Hutus who opted to remain in Zaire rather than return to Rwanda explains the way the attacks on the camps south of Kisangani were carried out, including the 'mopping up' operations carried out after the attacks as such. There are at least two possible interpretations of the intent to eliminate the Rwandan Hutus remaining in the country: either there was a decision to eliminate them rather than repatriate them, for whatever reason, or there was a decision to eliminate them because the breaking up of the camps in effect separated the 'good' Hutus from the bad: those who had little involvement in the 1994 genocide against Tutsis had returned, and those who fled rather than return were those who had participated in or supported the genocide. In either case, the systematic massacre of those remaining in Zaire was an abhorrent crime against humanity, but the underlying rationale for the decisions is material to whether these killings constituted genocide, that is, a decision to eliminate, in part, the Hutu ethnic group. The underlying reason for the massacres of Zairian Hutus in North Kivu is also material. This question is the most momentous one included in the mandate given to the Team, and one which requires further investigation.

h) The duty to investigate and prosecute

97. The Democratic Republic of Congo has a legal obligation, under international human rights law as well as international humanitarian law, to investigate responsibility for all serious violations of human rights and grave breaches of humanitarian law which occurred in its territory, before and after it came into power, and to prosecute those against whom credible evidence is found in tribunals which are independent and impartial, with full respect for the right of all accused persons to a fair trial. Thus

far, it has neither begun to do so, nor demonstrated the inclination to do so. In such circumstances, the interests of justice can only be served by endowing an international tribunal with competence over these crimes. Failure to do so will encourage the perception that the international community is not prepared to respond to serious violations of human rights and humanitarian law with impartiality and, in the long run, will nurture collective feelings of victimisation and of denial of justice, contributing to the cycle of collective reprisals and culture of impunity.

i) The duty to rehabilitate

98. The Democratic Republic of Congo likewise has a duty to rehabilitate victims of the armed conflict and the victims of serious human rights, which preceded and accompanied the conflict, in so far as it is able to do so, with international assistance if necessary.

B. RECOMMENDATIONS

1. The social and economic development of the Democratic Republic of Congo is dependent on peace and security. To attain them entails ending the cycle of impunity that stimulates and promotes all kinds of violence and violations.

2. Consequently, the persons responsible for the violence and violations during the period covered by the Team's mandate must be sought out and punished.

3. Since it was not possible for the Investigative Team to investigate all the allegations it received, from various sources, for reasons beyond its control, further investigation should be carried out by appropriate judicial or investigative fora.

4. The temporal and personal competence of the International Criminal Tribunal for Rwanda should be expanded to include "genocide and other such violations committed in the territory of neighbouring States..." committed:

a) by any person, regardless of his or her nationality;

b) from 1 January 1994 to 31 December 1997.

5. The evidence collected by the Team, including any information of a sensitive nature, in particular information which could endanger the lives and security of the sources, should be kept in a secure place until such time as:

a) it is determined that conditions for completing the investigation with full and unrestricted access to private and governmental sources within the Democratic Republic of Congo and respect for the conditions enumerated the Secretary General's letter of 15 July 1997, exist; or

b) competent national authorities demonstrate unequivocally their determination to prosecute those responsible for serious violations of human rights and humanitarian law which occurred during the whole period covered by the mandate of the Team, before independent and impartial tribunals, and provide full protection to witnesses and other persons and groups that provided information to the Investigative Team; or

c) the International Criminal Tribunal for Rwanda or an international criminal tribunal acquires competence to investigate serious violations of human rights and humanitarian law in the Democratic Republic of Congo during the period 1 January 1994 to 31 December 1997 regardless of the nationality of the perpetrator.

6. Such evidence and sensitive information should be stored in conformity with the Guidelines for the conduct of United Nations inquiries into allegations of massacres.

7. In the event that it is determined that conditions for completing the investigation with full and unrestricted access to sources within the Democratic Republic of Congo exist, and a new investigative body is established, the present Investigative Team recommends that the investigation focus on the following issues:

a) individual and State responsibility for massacres and other serious human rights violations occurring in North and South Kivu beginning in March 1993;

b) serious violations of human rights committed by or with the collusion of representatives of the former government of Rwanda who assumed leadership roles within the camps in eastern Zaire during the period July 1994 to October 1996;

c) the extent of direct and indirect participation by Rwandan Army (RPA) in the military operations carried out by the insurgent forces in the Democratic Republic of Congo beginning in October 1996;

d) the extent of participation in serious violations of human rights and international humanitarian law by foreign troops, including troops of neighbouring countries and mercenaries;

e) the intent underlying the massacre of Hutus, in particular the massacres of Zairian Hutus in North Kivu and the massacres of Rwandan Hutus in the interior of Zaire beginning in October 1996.

8. In the event that the investigation is reopened under United Nations auspices, the Team recommends that all neighbouring states and other states in possession of information concerning the occurrence of serious violations of human rights and international humanitarian law in the Democratic Republic of Congo during the pertinent period, and responsibility for such violations, be encouraged to co-operate with the investigation by providing access to relevant documentary and other evidence.

9. The Secretary General should do all he can to restore confidence in the Democratic Republic of Congo by redefining the role and behaviour of the Organization's agencies and offices operating there. The Office of the High Commissioner for Human Rights should strengthen its country Field Office and set up provincial branches of it.

10. The international community should help the Democratic Republic of Congo to establish a judicial institution staffed by competent, independent and properly paid people who will apply internationally recognised rules of procedure. That institution should renounce all referrals to courts of special jurisdiction.

11. The international community should support programs for the rehabilitation of victims of the conflict and victims of serious human rights violations, giving priority to the most vulnerable, without any discrimination on ethnic, political or other grounds.

12. The international community should also support programs intended to reduce ethnic tensions and promote respect for the essential dignity and equal rights of all persons, without regard for their national or ethnic background.

13. The present Report and Annex I should be published.

1. After the seizure of power by the AFDL in May 1997, the name of the country was changed from Republic of Zaire to Democratic Republic of Congo. Throughout this report, the name Zaire is used when referring to events before and the name of Democratic Republic of Congo to refer to events after the date.

2. First Convention Art.50; Second Convention Art.51; Third Convention Art.130; Fourth Convention Art. 147.

3. Arts. 49, 50, 129 and 146 of the four Conventions, respectively.

4. The name of the Rwandan Army changed after the change in governments in July 1994, from *Forces Armées Rwandaises* to Rwandese Patriotic Army, but members of the former army continued to operate as a military force after fleeing into eastern Zaire. Consequently, throughout this report, references to the Rwandan Army are accompanied by the acronym FAR or APR to clarify which force is being referred to.

Appendix

Summary of allegations and information obtained

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Part One - Summary of Allegations

1. This part of Annex I provides an overview of the allegations coming within the mandate of the Investigative Team, together with some information about the historical and legal background to events within its mandate. This overview is intended only to provide an understanding of the number and nature of the allegations that the Team intended to investigate, and to provide a context for the findings, which are presented in the second part of this Annex. The Summary of Allegations is based mainly on UN sources and published reports of NGOs. Throughout this part of the report, it is important to bear in mind that all statements in Part One referring to violations of human rights and international humanitarian law from March 1993 onward are to be understood as allegations which have been neither proved nor disproved. While an effort has been made to exclude allegations made by sources whose credibility is uncertain, or which *primae facie* do not appear plausible, it is important to bear in mind that the only findings of fact concerning serious violations of human rights and humanitarian law contained in this Annex are those included in Part Two.

I. March 1993 – October 1996

A. North Kivu

1. Origins of inter-ethnic violence

2. The province of North Kivu, with a surface area of about 29,000 km^2 and an estimated population of about 3 million, has been the centre of inter-ethnic tensions for decades. In March of 1993 these tensions exploded into ethnic violence.

3. Before the mass arrival of Rwandan refugees in 1994, the conflict in North Kivu mainly pitted the Banyarwanda, both Hutus and Tutsis, against those calling themselves "*autochtones*" (indigenous inhabitants), mainly the Hunde, Nyanga and Tembo. The Banyarwanda speak a language called Kinyarwanda, which is the national language of Rwanda. Immigration from Rwanda to North Kivu has a long history. From 1920 to 1940, the Belgians brought Rwandan Hutus and Tutsis to Masisi as labourers. A second wave came in 1948, when the Belgians promoted the migration to North Kivu to relieve pressures on the land in densely populated areas of Rwanda. Between 80,000 and 150,000 migrants, mainly Hutus, received land, tools and other privileges when they arrived in Masisi. Then, in 1959, Rwandan Tutsis fled Rwanda to Zaire to escape the persecution, which took place in that year.

4. Through successive waves of immigration the Banyarwanda came to constitute about 75% of the population in North Kivu. Among the Banyarwanda, Hutus outnumbered Tutsis by a large margin. Resentment over land issues and the predominant role of Banyarwanda in the economic life of the region made the *autochtones* increasingly hostile towards the Banyarwanda. Some feared that recognition of the Banyarwanda's right to Zairian nationality would further undermine the position of the original inhabitants of the area.

5. A law adopted in 1972 granted Zairian nationality to all persons of Rwandan origin who had established residence in Zaire prior to 1 January 1950 and had maintained residence in the country for 10 years. However, in 1981, new legislation rescinded this recognition of nationality and, in effect, made most Banyarwanda stateless. As from 1982, Banyarwanda were no longer allowed to vote or to stand as candidates in elections.

6. The Banyarwanda resented their exclusion from political leadership. Despite their numerical superiority in North Kivu, most positions in local government were held by "*autochtones*." Their exclusion from political power and the perceived hostility of the politically dominant forces contributed to a sense of insecurity among Banyarwanda, who feared being deprived arbitrarily of their property. This fear and insecurity contributed to the growing ethnic tensions in the region.

7. In 1990, growing resistance to the Mobutu regime led to significant changes in the political situation. Under increasing pressure for change, the repressive one-party government which had ruled Zaire for decades allowed the creation of opposition political parties and the convening of the "*Conférence Nationale Souveraine*" in 1991. The Conference was intended to establish the basis for a more democratic political system with broader participation of the diverse communities which populate Zaire. Inevitably, the issue of nationality arose, and Banyarwanda politicians were excluded from the Conference on the basis of "doubtful nationality" ("*nationalité douteuse*"), further heightening tensions in the Kivus, both North and South.

2. 1993: Outbreak of ethnic violence

8. In March 1993, Nyanga and Nande militia groups, then referred to as Ngilima, began to attack the Banyarwanda population in several areas of North Kivu. The Governor publicly questioned the nationality of the Banyarwanda and suggested that the security forces would assist efforts by Nyanga and Hunde to "exterminate" them. On 20 May 1993, Mai-Mai militia attacked Banyarwanda at Ntoto market in Walikale; by the next day, the violence had spread to Masisi. In response, the Banyarwanda created their own militias and counter-attacked the *autochtones*. The attacks and counter-attacks continued for several weeks, leaving approximately 6,000 dead and displacing an estimated 250,000, according to estimates by non-governmental sources. The army intervened, and the elite "Special Presidential Division" allegedly killed hundreds of villagers in Masisi between March and July 1993. Negotiations began, with the participation of church groups and civil leaders as well as representatives of the ethnic communities, the Governor was suspended and, in July 1993, tenuous peace was restored to the region.

3. 1994: The arrival of Rwandan Hutus and their impact on the conflict

9. In July 1994, over 700,000 Rwandan Hutus arrived in North Kivu when the Tutsi-led Rwandese Patriotic Front (RPF) captured Kigali and took power, following the genocide against Tutsis and killing of moderate Hutus by the predominately Hutu Habyarimana regime from April to July 1994. Whereas ethnic conflict in North Kivu had been essentially between the *autochtones* (Hunde, Nyanga and Tembo) on one side and Banyarwanda, including both Hutus and Tutsis, on the other, political divisions began to emerge among the Banyarwanda following the genocide and change of government in Rwanda. Zairian Hutus began allying themselves to the Hutu refugees, making the Tutsis even more isolated and vulnerable to attacks by the new Hutu alliance as well as the *autochtones*. The Tutsis were labelled as foreigners and some were expelled to Rwanda. The arrival of thousands of former Rwandan soldiers and militia members led to escalation in the type of weaponry used in clashes between ethnic groups. Whereas the weapons used previously were mainly machetes and other farming implements, the Rwandan Hutus brought with them automatic firearms that very quickly spread throughout the region, especially among the Hutu community.

10. The following are some of the most serious allegations of killings attributed to attacks by one ethnic group against another during this period:

a) On January 25 1996, the Hunde Mai-Mai militia attacked the centre of Bibwe, killing at least 10 Hutus. During the night the Interahamwe militia reacted, killing many Hunde. Some Hutus were also killed, apparently because the Interahamwe suspected some of them being traitors to the Hutu cause.

b) In February 1996, Hutu militias attacked Sake, where the Hunde are the majority, forcing most of the population to flee to Goma.

c) On 4 March 1996, Hutu militia set fire to Tutsi houses in Bokombo, killing at least 10 people.

d) In April 1996, the Nande attacked Zairian Hutus in Lubero, stealing their property and cattle. In response, the Hutus drove the Nande out of Rwindi. An unknown number of fatalities occurred. The same month there was an attack in Kitchanga, in Masisi, and many Tutsis were killed. The attack is variously attributed to the Ngilima or Interahamwe.

e) In May 1996, in Gihondo and Bwito, Hutu forces composed of Zairian and Interahamwe fighters burnt houses belonging to the Tutsis and Hunde, who took refuge in Ikobo, Walikale. The Ngilima counter-attacked at a Protestant church in Singa. The total number of victims was estimated at 500 dead.

f) Increasing attacks on Zairian Tutsis and cases of arbitrary arrest, sometimes followed by expulsion, led some 800 Tutsis to seek refuge in Nyakariba Monastery in the village of Mokoto, near Kitchanga. In May, Zairian soldiers accompanied by elements of Interahamwe attacked Tutsis in the Mokoto area. The Monastery was attacked on 13 May, and many of those who had sought refuge there were massacred. Estimates of the number of victims range from 100 to 250.

g) On 11 June 1996, thirty Tutsis were killed in Tshomba, Rutshuru, and on 25 June a Hutu attack on Kitchanga reportedly caused many deaths. The same month Hutu forces mounted an offensive against Kitchanga, an enclave of over 19,000 displaced Hunde and single largest concentration of *autochtones* in Northern Masisi. During a fierce battle, 62 people were killed, 57 of whom were Hutu and 5 Hunde. According to a non-governmental source, most of the victims were from the refugee camps. Some carried documents identifying them as members of the former Rwandan Army (FAR).

11. The Interahamwe and members of the former Rwandan Army (FAR) not only participated in the fighting among different Zairian ethnic groups, they also committed many acts of violence against the Rwandan Hutu refugees within the camps, as described in Part Two.

4. 1995 and 1996: Operations Kimia and Mbata

12. In response to mounting criticism over inaction regarding the violence raging in North Kivu, the government organised two military operations, known as Operation Kimia and Operation Mbata. The first took place in late 1995 and concentrated around the Masisi area where the *autochtones* were trying to expel the Banyarwanda. The second operation took place in 1996, and was aimed at neutralising the Mai-Mai and Ngilima militias in the Rutshuru area. Both operations were failures. Instead of putting an end to the carnage, the troops sent to the region took sides with the various protagonists. In Masisi, for example, the army (FAZ) sided with the Zairian Hutus and their Rwandan allies who were waging a campaign of terror against the *autochtones* and the Tutsis. In other areas the Army sided with the Tutsis and fought against the Hutus, Interahamwe and the *autochtones*. International observers reported that, at this stage of the conflict, the long unpaid Army (FAZ) units in effect operated as mercenaries, fighting for the faction that made the highest

offer.

13. The following are some of the actions allegedly undertaken as part of these operations, and their consequences:

a) Beginning in March 1996, Hutu militia supported by the army (FAZ) and Interahamwe pillaged and burnt houses of Tutsis and Nande in the village of Kibirizi, neighbouring Virunga National Park, killing over 50 people (34 Nande and 26 Tutsi). In early May 1996, the army (FAZ) killed an unknown number of persons in the area, including the villages of Vitshumbi, on Lake Idi Amin in the Virunga National Park, Kamandi, Butulia, Bwala and Nyankoma. The Ngilima and Mai-Mai counter-attacked in May 1996, causing over one thousand casualties, according to one source. The army (FAZ) in turn tortured and killed a number of civilians, whose remains were buried in a mass grave in Batundire, at the entrance to Kibirizi village. On 31 May 1996, three Zairian soldiers were killed by members of the Ngilima and Mai-Mai in Virunga Park in Rwindi. The Zairian forces reportedly fled, but subsequently returned with reinforcements, causing heavy civilian casualties among the Nyanga and Hunde population. During this period, a total of 3,716 houses were reportedly burnt down by the various groups involved in the fighting.

b) In early May 1996, paratroopers from the 312 battalion united with the Hutu militia from Karuba and Sharira to fight the Hunde militia in Masisi, leading to the partial destruction of the Masisi hospital. After the army arrested the president of the Mai-Mai, the Mai-Mai launched a counter offensive on 13 May and generalised violence ensued. Between the towns of Sake, Karuba, Ngungu and Ufamundu, the FAZ pursued Rwandan Hutus, including ex-soldiers and Interahamwe. Those who were captured allegedly were buried alive, with head facing down, while the Zairian troops watched with amusement. The same troops subsequently massacred an additional 100 Hutus in this area. Army troops also reportedly killed at least 15 persons at Kimoka village, including a number of women going to tend their farms.

c) In June 1996, the Ngilima militia attempted to assassinate the chief of the village of Kanyabayonga, in the Lubero area, bordering Rutshuru. The Army attacked the Ngilima, reportedly destroying the town hospital and burning and pillaging thousands of homes in the process. In the towns of Pinga, Mweso and Kitchanga, the Army collaborated with the Mai-Mai and killed six Hutus. In retaliation, the Hutus killed two soldiers; generalised violence ensued, resulting in an unknown number of additional deaths.

14. In sum, during the period 1 March 1993 to August 1996 serious violations of human rights and humanitarian law were allegedly committed on a massive scale by all parties to the conflict, including the Armed Forces of Zaire, former Rwandan troops, and the "*autochthone*," Interahamwe and Tutsi militias. Unfortunately, little progress was made in investigating these allegations.

B. South Kivu

1. The origins of the ethnic conflict

15. The Province of South Kivu borders North Kivu, to the north, Shaba Province to the south and Maniema Province to the west. To the east lie Rwanda and Burundi. Bukavu is the provincial capital and Uvira, some 150 kilometres to the south, is the second largest city in the province. Bukavu borders Rwanda and Uvira borders Burundi.

16. Historians do not agree when the migration of Tutsi pastoralists from the historic kingdom of Rwanda

to the Kivus began, but they do agree that migrations began sometime between the 16th and 18th centuries, when Rwandan Tutsis began settling in Kakamba, in the plain of Ruzizi and the Mulenge Hills, because of the climate. They established their first settlement at Mulenge, thus becoming known as Banyamulenge or people of Mulenge. They subsequently settled in Uvira, Mwenga and Fizi, living side-by-side with indigenous Bantu ethnic groups including the Babambe, Bafulero, Banyindu, Barega, Barundi and Bashi. The Banyarwanda speak a variant of Kinyarwanda recognised as a separate dialect by linguists. Recent estimates of their number range from 250,000 to 400,000 people, roughly similar in size to other ethnic groups indigenous to South Kivu.

17. The Banyamulenge lived in relative peace and harmony with their neighbours in South Kivu until the Mulele rebellion in 1964. The Mulelists espoused a sort of primitive communism in which property, land and cattle were to be shared among the local population. The Banyamulenge did not share this vision and helped the army crush the movement in South Kivu. This episode instilled a deep and lingering resentment against the Banyamulenge within other ethnic groups in the area. The Banyamulenge continued to prosper, however, and succeeded in securing political representation at local and, to a limited extent, national level throughout the 1970s.

18. As in North Kivu, tensions between the Banyamulenge and other ethnic groups deteriorated during the 1980s as a result of the measures taken to deprive them of Zairian nationality and their property (see above).

2. 1993-1994: Arrival of refugees

19. Inter-ethnic tensions in South Kivu were further exacerbated by the refugee crises of 1993 and 1994. The first wave of refugees came from Burundi in October 1993, following the assassination of the Burundian President Melchior Ndadaye, a Hutu. The assassination provoked widespread massacres as the Hutus fought the Tutsis, whom they accused of having been responsible for the death of the president. Tens of thousands of Burundian Hutus crossed into South Kivu, and most settled in refugee camps around the town of Uvira. In mid-1994, the Burundian refugees were joined in these camps by thousands of Rwandan Hutus, fleeing their country following the genocide there. By September of 1996, the total number of refugees in South Kivu was estimated at over 300,000, most of whom were located in some 20 camps supported by the UNHCR.

3. 1995-96: The expulsion of Banyamulenge and formation of a Banyamulenge militia

20. On 28 April 1995, the Transitional Parliament adopted a Resolution ostensibly intended to prevent Rwandan and Burundian refugees from acquiring Zairian nationality but which, in reality, applied to Banyamulenge as well as the Burundian and Rwandans who had arrived seeking refugee in recent years. Tutsis were banned from all administrative and other posts, and new Governors and military commanders were appointed. All sales and transfers of property to "immigrants who have acquired Zairian nationality fraudulently" were declared null and void, and a list of persons to be arrested and expelled from Zaire was annexed to the resolution.

21. Local authorities in South Kivu began to take steps towards implementation of this Resolution, and the situation of the Banyamulenge became increasingly insecure. In September 1995, Milima, a non-governmental organisation which had lobbied for recognition of the Banyamulenge's right to nationality, was banned. On 19 October 1995, an official in Uvira referred to the Banyamulenge as "an ethnic group

unknown in Zaire" and stated that their leaders "will all be expelled from the country..." With the encouragement of provincial authorities, the Bembe and Rega began to organise militia, following the model of the Rwandan Interahamwe and the Mai-Mai and Ngilima of North Kivu. By the time fighting broke out in October 1996, hundreds of Banyamulenge had been forcibly expelled to Burundi and Rwanda, and hundreds more had fled there seeking refuge.

22. There were increasing reports of violence against Banyamulenge. Between 6 and 8 September 1996, the Zairian Army reportedly killed 5 Banyamulenge in Uvira. A demonstration against the Banyamulenge took place on 9 September, followed by looting and arson of Banyamulenge property. The Commissioner of Uvira reportedly encouraged the public to loot Tutsi property. On 22 September, some 40 Banyamulenge who had been arrested by the Army the previous day around the towns of Baraka and Fizi reportedly were executed.

23. These developments, added to trepidation concerning the presence of Rwandan Hutus, including many who had participated in the genocide against Rwandan Tutsis, and reports of attacks by Rwandan Hutus on Zairian Tutsis in North Kivu, reinforced the determination of the Banyamulenge to resist attempts to expel or persecute them. These threats nourished the perceived need for a strong militia. Killings attributed to Banyamulenge militia began to be reported.

II. October 1996 - December 1997

A. South Kivu

1. Attacks on camps in the Uvira region and related killings

24. Reports of massive killings of non-combatants began to emerge as a result of the military offensive mounted by AFDL troops in the Uvira area in mid-October 1996, and persisted as the war between the AFDL and the government forces intensified. After the capture of Uvira, the offensive moved north towards Bukavu, as did the main focus of attacks on refugees and other non-combatants. After the capture of Bukavu in late October, the focus shifted to the west, especially Shabunda and the surrounding region.

25. On Sunday, 14 October 1996, Runingo refugee camp, located about 20 kilometres from Uvira town, was attacked with mortars and automatic rifles. The attack created panic among the population of the camp. Within hours, the camp was empty, as its inhabitants fled north to seek shelter in other camps. Within the next few days, all the remaining camps in the Uvira area were attacked by the AFDL, supported by the Rwandan Army and Banyamulenge militia. Most of the population of the abandoned camps, estimated at 220,000, fled north towards Bukavu. Uvira was captured during the night of 24-25 October, and the first statements broadcast internationally announcing the existence of the AFDL were made from Uvira after its capture.

26. Many refugees died during the trek North from Uvira, killed by AFDL and Banyamulenge forces, who were searching for Zairian Army deserters and former members of the Rwandan Army (ex-FAR), who mingled with the refugees. Specific allegations include the following:

a) Thousands of refugees were killed on 20 October, some in attacks on camps and others as they fled from the camps. The victims include 541 killed at the Kitemesho camp; 435 killed in a banana plantation at Luvubu; 334 persons fleeing from the Kanganiro camp killed at the Ruzizi river; 851 persons from the

Lubarika camp killed in the nearby coffee and banana plantations, 648 persons, including refugees and local population, killed at Kamanyola and an additional 155 refugees and Zairians killed at Rwenena. A few days before the fall of Bukavu, a column of refugees was ambushed by AFDL forces near Kamanyola, apparently to prevent them from reaching Bukavu. Hundreds were reportedly killed in this incident.

b) In the days that followed, 527 refugees were reportedly killed at a ravine near Rushima on 22 October and 136 refugees at the Kibogoye camp on Oct 23. On 24 October 50 persons were killed at Biriba camp, 615 at Runingo, 887 in the sugar plantations of SUCKI and Ruzizi and 201 at Mulongwe. In each of these cases, the victims reportedly included refugees and nationals. Three massacres in which the victims reportedly were exclusively Zairian were reported the same day, one involving 37 victims at Kimanga. October 24, one producing 18 victims at Kavimvira and another resulting in 11 deaths at Kasenga. Sixty-two patients at the Uvira general hospital were also killed on 24 October, and buried in a mass grave.

c) On 25 October massacres of Zairians were reported at the village of Kalimabenge were the port of Kalundu, producing 62 and 53 victims, respectively, and on 26 October massacres of Zairian nationals were reported at the village of Kabimba, resulting in 12 victims; the village of Kigongo, 26 victims; at Makobola, where 15 persons were killed at and at the Kilimabenge valley, in the Fizi plateau, where 211 persons were killed. On 28 October, 27 refugees reportedly were killed at Makobola, 24 Zairians at Tunene, 55 refugees at Swima and 59 Zairians at Lusambo. At Mboko-Centre, 687 Zairians were reportedly killed on 29 October.

d) Between 27 October and 1 November 1996, the AFDL organised the return of nationals who had been displaced by the fighting in this region. Some Rwandan and Burundian refugees disguised themselves as Zairians in order to be taken back with the displaced people, but upon arrival at the checkpoint of Kalungwe, the AFDL separated the refugees from the Zairians. The Burundians were executed at Kahororo, in the no-man's-land between the two border posts of Gatumba and Kavimvira, while the Rwandese were taken to Rushima and executed. The victims included approximately 1500 Burundians and 1256 Rwandans. Reports were also received that the Burundian Army executed Hutu refugees in November 1996, dumping the bodies of the victims into the Ruzizi River and Lake Tanganyika.

2. Bukavu

27. On 22 October 1996, the population of the camps south of Bukavu camps, in particular the camp at Nyatende and the two at Nyangezi, began to flee the approaching forces. An estimated 46,000 persons abandoned these camps, many fleeing to the west, towards Chimanga. Little is known about events in the camps themselves, with the exception of Chimanga camp, where an estimated 500 refugees and displaced persons were reportedly killed.

28. As the rebel forces drew closer, humanitarian organisations withdrew from Bukavu on 28 October. Insecurity in the city increased, due in part to rebel action and in part to the growing fear and lack of discipline of the remaining governmental troops. The stream of refugees and displaced Zairians on the road leading west from Bukavu to Hombo, Walikale and Kisangani became a flood. As many as 250,000 refugees from Bukavu were reported in Hombo, many without food, water or shelter. Sanitary conditions were horrific, and estimates of the mortality rate ranged from 480 to 960 deaths per day.

29. The attack on Bukavu reportedly included the indiscriminate bombing of residential areas. By 30 October the town was under the control of the AFDL. One source reported that 525 persons were killed between the departure of the international humanitarian organisations and the capture of the town by the

AFDL, but the cause of these deaths and the identity of the victims was not specified. Another source reported that 83 bodies were found after the capture of Bukavu, many of them unarmed civilians shot at close range. The Roman Catholic Archbishop Munzihirwa was among the victims.

30. Deliberate execution of displaced camp residents was reported in Bukavu and in the border area. AFDL soldiers were implicated in many killings, including the killing of a priest and some children in November 1996 at Bushwira, and the burning alive of a woman and her child near Bukavu town. RPA troops were implicated in several reports of killings near the border.

3. Shabunda

31. Following the attacks on refugee camps during the AFDL offensive, many of their inhabitants fled west to Shabunda or deep into the forest. In December 1996 and January 1997, the AFDL attacked the new camps that had been set up in Shabunda, killing thousands. There was no effort to spare women and children, nor were the refugees given the option of returning to Rwanda or Burundi. The attacks on these improvised camps caused the survivors to flee into the forest, causing a dramatic increase in the number of persons living in extremely precarious conditions beyond the reach of humanitarian assistance.

32. Limited assistance was provided at some transit centres and way stations along the routes most commonly taken by the refugees, namely, the western Bukavu-Shabunda axis and the northwestern Bukavu-Walikale axis. As refugees became aware of these sources of aid, they started to come out of the forest and onto the roads, heading towards Rwanda. The AFDL reportedly threatened the local population, ordering them not to help the refugees but rather to encourage the refugees to leave the forest. Easter Sunday was set as a deadline: anyone found helping the refugees after that date would be tortured and killed by the military, and instances in which the AFDL military carried out such threats and killed members of the local population were reported.

33. For several months, the AFDL barred the access of humanitarian organisations to the area. In late March or early April 1997, an exploratory mission by a humanitarian organisation revealed that the AFDL military had been systematically killing refugees on these roads, as well as those found in the forest. Village chiefs had been ordered to assist the military in "cleaning the road". An AFDL commander was quoted as stating that "all ex-FAR and Interahamwe had to be eliminated," including women and children, because they were being used as shields.

B. North Kivu

1. Overview

34. In 1994, UNHCR established five large camps in North Kivu following the mass exodus of Rwandans in July of that year. The five camps were Katale and Kahindo, about 50 kilometres north of Goma; Kibumba, half-way between Goma and Katale, and Mugunga and Lac Vert, located on either side of the road leading west from Goma, 20 kilometres from the town. UNHCR estimated that in mid-September 1996, the total population of these five camps was 722,000 persons.

35. The population of the camps in North Kivu was composed entirely of Rwandan Hutus. Some were former soldiers of the Rwandan government which had been overthrown in 1994, and others were members of the Interahamwe militia, which played a key role in the 1994 Rwandan genocide. The government of

Zaire, headed by President Mobutu, had supported the government overthrown in 1994. When that regime was overthrown, Zaire provided refuge to the members of the fallen government and their supporters. The Zairian Army disarmed many soldiers and militia members when they crossed the border, but the arms quickly reappeared in camps dominated, in many cases, by the same leaders responsible for the genocide. In violation of international standards, Zaire allowed the camps to be established close to the border, where they posed a continuing threat to Rwandan security, and made no effort to comply with its obligation to separate those guilty of genocide and crimes against humanity from genuine refugees.

36. The Interahamwe and officials and soldiers of the former government of Rwanda maintained strict control over the population in the camps. They controlled access to food and other essentials. Humanitarian workers were threatened and subjected to physical violence. They refused to allow repatriation to Rwanda, and killed a number of refugees who wished to do so. UNHCR repeatedly denounced "banditry, gang attacks, extortion and diversion of humanitarian assistance from the most vulnerable, harassment of humanitarian personnel and the elimination of any form of dissent," and, jointly with the Secretary General, appealed to the Security Council to send an international force to remove military elements from the camps and remove the camps from the border area. The creation of a multinational force with a more limited mandate was approved only days before the attack on Mugunga and Lac Vert camps. The massive repatriation and the destruction of the camps near the border weakened the political will to deploy an international force.

37. In October and November 1996, AFDL rebels, with support from the Rwandese Patriotic Army, attacked and disbanded all five of these camps. Their aim was to force the refugees to return to Rwanda, thus eliminating the risk of cross-border raids on Rwandan territory by the military and paramilitary forces based in the camps. Serious violations of human rights and international humanitarian law allegedly occurred during and after the attacks on the camps, including indiscriminate shelling of the camps, the systematic killing of young males in the camps, the rape of women and the killing of those who refused to return to Rwanda.

2. Attacks on Kibumba, Katale and Kahindo camps

38. Attacks on the camps in North Kivu began with the shelling of the camp closest to the Rwandan border, Kibumba camp, in mid to late October 1996. The shelling lasted one week. Many of the inhabitants of the camp fled on foot to the Mugunga camp during this week, before the AFDL took control of the Kibumba camp.

39. In mid to late October 1996, the AFDL shelled both Katale and Kahindo camps. Armed elements in the camps put up resistance until their ammunition ran out, at which time the camp fell to the AFDL. Many of the inhabitants of these camps fled west, through the forest, to Tongo and beyond.

3. The capture of Goma

40. Following the taking of these three northern camps, the AFDL captured Goma on 1 November, attacking from the north and east. There were allegations of ethnically motivated killings of Zairians in Goma during and after the capture. Much of the population of Goma fled west on the road to Sake.

4. Attacks on Mugunga and Lac Vert camps

41. Most of the Rwandans who had fled Kibumba camp and some of those from Katale and Kahindo joined the population already housed at the Mugunga camp. After capturing Goma the AFDL mounted attacks against the two remaining camps, Mugunga and Lac Vert, the latter bordering the headquarters of the former Rwandan Army. The attack again began with shelling, and the armed elements in the camps responded by firing back. Some refugees who tried to flee the camps were killed by the armed elements that controlled the camps. The AFDL took Mugunga and Lac Vert camps on the morning of 15 November, allegedly executing a number of non-combatants.

5. Attacks on fleeing camp residents and attacks on local population by fleeing soldiers and militia

42. An estimated 500,000 to 600,000 Rwandans returned to Rwanda during the five days following the taking of Mugunga and Lac Vert camps. Others fled into the forest prior to the arrival of the AFDL and during the attack on the camps. Many refugees who fled the fighting from Mugunga in a westward direction, away from Rwanda, were killed in the surrounding hills.

43. After dismantling of the camps in North Kivu, the AFDL also carried out operations in zones north of Goma, notably in Masisi and Rutshuru. The operations had two goals: to gain control of territory for the AFDL in their struggle to oust the Mobutu regime and to punish villages suspected of collaboration with the Rwandan Hutus. The AFDL reportedly committed a number of massacres in ethnically Hutu villages because they suspected Zairian Hutus of supporting or collaborating with the Interahamwe militia. Such massacres are alleged to have taken place principally in Rutshuru and Masisi, but also in Walikale, Lubero and Beni, as well as in South Kivu. In one such incident, nearly 80 villagers were killed in Karuba in January 1997, 35 of them in a church.

44. Hundreds if not thousands of displaced camp residents were killed by the AFDL in Masisi and Rutshuru during the remaining months of 1996 and early 1997. Massacres were reported in Birambizo, Bunagana, Habuanga, Kabingo, Kagusa, Kalangala, Kasura, Katoyi, Kazinga, Kibabi, Kinigi, Kiringa, Luke, Matanda, Mugogo, Mushaki, Nyakariba, Nyamitaba, Nyamyumba, Rubagevi, Ruhegeri, Ruvunda, Ruzirantaka, and other localities. In the Rutshuru area, to the northeast of Goma, hundreds of villagers, including many women and children, were reportedly killed by the AFDL in Shinda on or about 20 November 1996. In December, over 280 fleeing Rwandans were reportedly killed by the AFDL and its allies in or near Kahindo.

45. The massacres against Hutu villages followed a pattern, according to the allegations: the AFDL would arrive early in the morning and call a public meeting, ostensibly to explain the new government to the villagers. When the villagers were assembled, the AFDL would separate Hutus from others and kill all the Hutus or, in some cases, all Hutu men. In some cases the victims were shot, and in other cases killed with machetes, or by hitting them on the head with a nail-studded club known as a *massue*. A second pattern reportedly consisted in arriving at a Hutu village at night; setting fire to homes and shooting those who tried to escape.

46. Some of the former Rwandan soldiers from the camps and the Rwandan Hutu militia known as the Interahamwe also fled in westward, killing unarmed civilians to obtain food, money and vehicles. In some cases they allegedly attacked buses and killed non-Hutu passengers. In November 1996, former Rwandan

soldiers reportedly killed a number of displaced civilians driving through the Kitchanga area. Zairian soldiers also fled the advancing AFDL-Rwandan forces, often pillaging and raping the local population as they passed.

47. Thus, at least four distinct armed groups allegedly participated in attacks on civilians during the period of the war in eastern Democratic Republic of Congo and after: Zairian soldiers and deserters, the Mai-Mai, Hutu militia, including former Rwandan Army (FAR) soldiers and members of the Interahamwe, and the AFDL. The AFDL forces allegedly were composed in part of Rwandan Army (RPA) troops, and often led by Rwandan officers.

C. Serious violations of human rights and humanitarian law committed after the break-up of the camps

1. Overview

48. After the break-up of the camps in North Kivu, the AFDL and its allies, including the Rwandan Army and Mai-Mai militia, pursued a policy of forcible return of Rwandan Hutus to Rwanda.

49. Many of the survivors of camps in North Kivu who did not wish to return to Rwanda, or who wished to return but were prevented from doing so by the Interahamwe and camp leaders, fled westward. Others fled northward into Virunga National Park bordering Rwanda. Survivors of the attacks on camps in South Kivu and who did not return to Rwanda or Burundi fled west or southwest. Much of their trek across the Democratic Republic of Congo was through forest, as many of them believed the risk of being killed was greater on the principal roads. They often passed around towns rather than through them, when warned by local population that soldiers or militia were in the towns.

50. After months of walking, over 11,000 Rwandans reached the Republic of Congo, some 1,500 arrived in the Central African Republic and over 1,900 of those who fled to the southwest reached Angola.[2] Smaller numbers continued on to other countries in the region and elsewhere. Humanitarian agencies estimate that tens of thousands remain in the interior of the Democratic Republic of Congo, out of contact with humanitarian agencies. These include armed groups and their dependants, some of whom remain in areas bordering Rwanda; civilians who receive some support in Congolese Hutu villages, and those who lead a precarious existence foraging in remote forest areas.

51. During their trek across the country - which for many covered one thousand kilometres or more and lasted months - the former camp population continued to be exposed to serious human rights violations and violations of international humanitarian law. Allegations concerning killings in the areas near the camps, including Masisi and Rutshuru, have been summarised above. What follows is a summary of allegations concerning killings and other serious violations of human rights and humanitarian law which occurred as the refugees and former soldiers moved further into the interior, towards other borders, and as the AFDL and its allies continued their offensive beyond the Kivus and towards Kinshasa. These allegations cover three areas: the North Kivu - Kisangani axis; the Kisangani area, in particular south of the city and the Kisangani - Mbandaka axis.

2. The Walikale - Tingi-Tingi axis

52. Thousands of refugees were allegedly killed in and around Walikale. In one incident, AFDL and Rwandan Army (RPA) soldiers reportedly killed some 3,200 people, including over 1,800 children, on or about 18 December 1996. According to another report, AFDL and Rwandan Army (RPA) soldiers massacred at least 500 refugees along the Walikale road in North Bunyakiri. The AFDL frequently blocked access to this area.

53. Retreating Zairian Army soldiers and Serb mercenaries have been accused of aerial bombardment of marketplaces and villages in the Walikale and Shabunda areas, killing many civilians.

54. In mid-December 1996, temporary camps for displaced persons were set up in Amisi and Tingi-Tingi. The population of the Tingi-Tingi camp was estimated to be 80,000 persons, including 12,000 children under the age of five, and the population of the Amisi camp was estimated 40,000 persons. By 7 February 1997, most humanitarian organisations no longer had a permanent presence in Tingi-Tingi and Amisi because of the proximity of the fighting. AFDL troops reached Tingi-Tingi by the end of February, and killed thousands of persons, according to some reports. Some sources indicate that foreign mercenaries participated in the attack on Tingi-Tingi. Some of those who survived the attack on the camp were killed as they fled towards Kisangani.

3. Kisangani and points South

55. Retreating Zairian soldiers began to arrive in Kisangani in November 1996, reportedly committing a number of rapes. Kisangani was captured by the AFDL on 15 March, two weeks after the attack on Tingi-Tingi.

56. Additional camps had been set up south of Kisangani, in Kasese, Biaro and Obilo. In April, the AFDL blocked access to this area, and reportedly proceeded to execute systematically thousands of Rwandan Hutus.

57. During the evening of 20 April 1997, AFDL officers reportedly told local villagers that the refugees had killed six local residents and incited them to attack Kasese refugee camp. The villagers attacked the camp on 21 April, but were repelled by armed elements. AFDL troops then surrounded and attacked Kasese camp during the early morning of 22 April. The attack lasted several hours, and the soldiers used both guns and machetes or knives. Local residents also participated in the killing. Many women and children were among the victims.

58. In Biaro, a similar large-scale massacre was reported, and other killings occurred along the route to Ubundu. The Rwandan Army reportedly directed or participated in these massacres.

4. Equateur Province

59. Allegations of killings and other serious human rights violations followed the displaced Rwandans as they continued their flight across the country and into the Equateur Province. In contrast to the Kivus and even the Kisangani region, reports of armed clashes between the AFDL and its allies and the Interahamwe and former Rwandan Army (FAR) soldiers became scarce.

60. Refugees had begun to arrive in Wendji at the end of April, and over the following two weeks, their number grew to over 6,000; a temporary camp was set up. During the early morning of 13 May 1997, AFDL

troops arrived and announced to the local population in Lingala that they were not there for the Congolese, but were there for the refugees. The Congolese were ordered to place white headbands around their heads, and soon after, large-scale killings of the refugees commenced.

61. The refugees began to flee north toward Mbandaka, the provincial capital. Soldiers pursued and the killing continued along the route. By late morning, the fleeing refugees began to reach Mbandaka and went to the port, where an even larger number of refugees had been waiting for a barge to take them to Irebu, and from there across the river to the Republic of Congo. Towards mid-day, the troops arrived and surrounded the port area. Again, indiscriminate shooting began in which hundreds were killed.

D. Kinshasa

62. During the night of Wednesday 14 May 1997, six people were killed and a dozen wounded at the port, and a curfew was announced in Kinshasa. On Friday 16 May, Mobutu left the country clandestinely. The same night, the elite Special Presidential Division assassinated General Mahele Lieko Bokungu, Mobutu's Minister of Defence. A movement of tanks and military vehicles from Kinshasa to Bas Zaire signalled the Army's surrender.

63. On 17 May, Laurent Désiré Kabila proclaimed himself President of the Democratic Republic of Congo and hundreds of AFDL forces entered Kinshasa in an organised fashion. The rebels were quiet, cautious and disciplined. They were soon joined by thousands of AFDL troops and took over Camp Tshatshi, the Headquarters of the Special Presidential Force. Zairian troops deposited their arms and surrendered without resistance. Some 220 casualties were reported, mostly looters who were shot by the Army and insurgents alike.

64. Human rights violations after the capture of Kinshasa were reported, including allegations of killings, torture and mutilation, and disappearances. The AFDL reportedly executed a number of unarmed members of Mobutu's intelligence agency without trial. International human rights organisations reported that mutilated corpses of soldiers and suspected criminals were found repeatedly during the weeks following the taking of Kinshasa.

65. On 21 May 1997 the former Director of the Hospital Manayamo and newly appointed Minister of Health was informed sixteen Rwandan Hutu patients had disappeared from the hospital. The International Committee of the Red Cross (ICRC) subsequently located them in a former presidential palace, where they had been detained for three days, accused of being members of the Interahamwe militia. The International Committee of the Red Cross was not allowed to visit them again.

E. Destruction of Evidence

66. Information from various sources indicates that the AFDL made efforts to remove bodies which had been buried in mass graves, and otherwise destroyed evidence of massacres which occurred during the period October 1996 to May 1997. The AFDL reportedly engaged in systematic destruction of corpses, particularly during the last week of April 1997 along the Kisangani-Ubundu axis. Access to the area was strictly controlled during this time. Similar efforts were underway in Walikale and other parts of North Kivu. From mid-November to early December a systematic effort to remove bodies from mass graves in the Mbandaka-

Wendji area also was reported. A curfew was imposed during this time.

Part Two - Information obtained

67. Part Two of Annex I contains the results of the investigation, that is, findings of fact concerning serious violations of human rights and international humanitarian law occurring in Zaire / Democratic Republic of Congo after 1 March 1993. These findings are based on credible testimony and material evidence obtained by the Team. In some cases, the evidence was provided to the Team directly. The Team also took into account some testimonies collected by other organisations, both inter-governmental and non-governmental, when the sufficient information was provided about the identity of the declarant and circumstances in which the declaration was provided and it was corroborated by information from a least one other source. The standard applied in arriving at conclusions of fact is that of "*intime conviction*" that the information is true.

68. The Team's mandate requested it to obtain information about responsibility for serious violations of human rights and humanitarian law, as well as information about the violations as such. Regrettably, the Team was not able to obtain sufficient information about the composition and chain of command of the relevant military forces and paramilitary groups to arrive at precise conclusions in this regard. This being so, the Team considers that its duty to act with strict objectivity and impartiality would not be well served by expressing mere opinions about the probable role of any State or other party to the conflict.

I. Human rights violations prior to the 1996 insurgency

69. The Investigative Team received limited information concerning the human rights violations alleged to have occurred prior to the period March 1993 to the beginning of the insurgency in October 1996.

A. North Kivu

70. Testimony was received concerning the ethnic fighting in 1993. A witness described an attack by Zairian Hutus on the Hunde village of Muhlolo II in Bahunde, Masisi, late in May 1993. Eight unarmed persons were shot and killed. The testimony appears to be credible, but does not provide a sufficient basis for reach broader conclusions about the events alleged to have occurred during this period.

71. Several witnesses provided information about killings committed by Rwandan Hutus who sought refuge in the Goma area after the 1994 genocide and change of government in Rwanda. Their testimonies concerned ten homicides committed in the course of theft or personal quarrels, over the course of two years. There is no reason to doubt the credibility of this testimony, which confirms that the large number of displaced Rwandans represented a source of insecurity for the local population. However, these testimonies are not sufficient basis to reach firm conclusions about the magnitude of the threat. There is no evidence of official complicity in or incitement of these killings, and sources agree that law enforcement was generally ineffectual throughout the entire area during this time. Consequently, these killings appear to be crimes, rather than human rights violations.

72. Finally, one witness provided evidence as to a cross border attack on a Red Cross facility in Kibumba camp on 27 July 1996, several weeks before the main offensive against the camps began. The witness was injured, and three co-workers were killed. Circumstantial evidence tends to implicate the Rwandan Army (RPA) in this incident, which would constitute a serious human right violation if governmental responsibility

were established. Clear proof of responsibility is lacking, however.

B. South Kivu

73. Testimony was also received concerning a cross-border attack on a camp in South Kivu in 1995. A Hutu refugee woman stated that the Birava camp was attacked during a night in April 1995. The inhabitants of the camp heard motor boats followed by gunfire, and saw Kinyarwanda and Swahili speaking soldiers enter the camp. One of the witness' sons was shot and killed. Her mother was shot in the back, and died on the way to the hospital in Kashusha camp. The witness also was shot, but recovered. Another witness stated that approximately 40 persons were killed in a cross border attack on the camp on or about 13 April, and that at least one of the victims was decapitated.

II. Violations of human rights and humanitarian law during the conflict

A. South Kivu

74. Although security conditions did not allow the Investigative Team to establish a presence in South Kivu, several testimonies concerning events in this area were received from witnesses interviewed in Goma and Kinshasa, as well as neighbouring countries.

1. The Uvira area

75. The most credible and relevant testimony obtained by the Investigative Team concerning Uvira and the surrounding area describes attacks on a camp and a hospital.

76. Runingo camp was shelled on 19 October 1996. After the shelling, AFDL soldiers entered the camp, shooting at unarmed refugees. One witness helped bury the dead, who included 111 men, 85 women and 225 children, in mass graves. The children were buried eight per grave. Soldiers made an effort to conceal the location of the gravesite.

77. Other witnesses described a massacre that occurred outside a Pentecostal church in Runingo camp. Soldiers surrounded the church, where many refugees were gathered, and began to shoot indiscriminately. Grenades were also used, according to some witnesses. Estimates of the number of victims vary from 30 to 80 persons, including the pastor and his wife and five children.

78. Another witness described the attack on a hospital in the village of Lemera, on the road from Uvira to Bukavu. The village was attacked by insurgents early in the morning of 6 October. Most of the population had abandoned the village, but a number of injured remained in the hospital. When the troops arrived there, they entered a post-operation room, put their weapons in the mouths of the patients and shot them. They also killed two male nurses, one of whom was hit on the head with a nail-studded club known as a "*massue*". The witness was not present during the killings, but went to the hospital and saw the bodies after the soldiers left.

79. These massacres, since they occurred during an armed conflict and were committed by a party to the conflict, constitute serious violations of international humanitarian law. Witnesses attributed the massacres Runingo camp and Lemera hospital to "Rwandans" without giving further details as to their identity, nor the reason for believing that they were Rwandan. Given the tendency of the non-Tutsi population of South Kivu

to deny that the Banyamulenge are citizens, and the fact that the Banyamulenge and Rwandans speak the same language, descriptions of soldiers as being Rwandan can not be taken at face value, unless specific reasons for this conclusion are stated.

2. Bukavu

80. The Investigative Team did not receive any testimony concerning violations of human rights or humanitarian law during the attack on Bukavu, but did receive testimony concerning attacks on camps in the area as well as some killings which occurred during flight from it. Information was also received concerning human rights violations which occurred at a hospital in Lwiro.

81. A Rwandan Hutu priest told the Investigative Team that he moved from Bukavu to Inera camp in late October, after the assassination of Archbishop Munzihirwa. Soldiers entered the camp after shelling, and the witness stated that he saw them deliberately shoot a number of unarmed refugees.

82. Kashusha camp was attacked on the morning of 2 November 1996. A witness reported seeing soldiers shoot two unarmed persons. Many of those who fled Kashusha and Inera camp fled to Hombo, some 100 kilometres to the northwest. A witness among those who fled stated that, before reaching Hombo, they reached a bridge controlled by insurgents. A soldier ordered them to stop, in Swahili. Other soldiers suddenly appeared behind them and fired on the group. The witness' eight children were among those killed. Drunken soldiers who spoke Kinyarwanda attacked Hombo days later, on a Sunday, in the early hours of the morning. A witness reported that the soldiers told refugees that the soldiers would make the refugees run until they die.

83. Another witness who fled the village of Bwegera on 18 October 1996 and later fled Bukavu when the AFDL attacked on 29 October, described how retreating Zairian soldiers robbed fleeing civilians, killing them if they resisted. These incidents were witnessed on the road from Bukavu to Kabare, Bunyakiri and Walikale. These killings violate Zaire's obligations under international human rights and humanitarian law.

84. On 26 April 1997, 50 unaccompanied minors, some of them under intravenous feeding, were abducted from the Lwiro Hospital, 30 kilometres north of Bukavu, along with 11 adult Hutu refugees. Between 4h00 and 5h00, a large number of armed soldiers entered the hospital and beat the nurses on duty to force them identify Hutu refugee patients. When they found the refugees, they were ordered to get on a truck, and told that those who were not on the truck by the count of ten would be killed. Those who were physically able scrambled onto the truck, climbing and falling over each other. Some mothers dropped their children. On the truck, they were repeatedly hit with the guns stocks. Some 20 soldiers later returned to the Hospital to beat and threaten the nurses further. Witnesses have provided the name of the AFDL commander allegedly in charge of this operation.

85. The refugees were taken to Kavumu airport, where they were confined in a shipping container. The entire group of 61 persons was put into one container, which was dark and unventilated. No toilet was provided, and sanitary conditions were horrible. Except for the smallest babies, all the refugees were beaten repeatedly, in some cases with electric cables. On the second and third day, a small amount of food was provided to the youngest children and women who were breast-feeding. On the third day, they were released, due to international pressure. One person died during this detention.

86. The statements by witnesses do not clearly identify the forces responsible for the killings in Kashusha camp and near Hombo. Circumstantial evidence suggests that they were either AFDL troops or Rwandan troops, or a mixture of both. Since these killings were committed by troops in the context of armed conflict, they violate international humanitarian law, regardless of the identity of the troops involved. The killings by retreating governmental troops violate Zaire's obligations under international human rights law, as well as international humanitarian law.

87. The abduction and mistreatment of the children and their caretakers by AFDL troops violates several provisions of Common Article 3 of the Geneva Conventions, including paragraph 1 (a), which prohibits violence to life and person, cruel treatment and torture; paragraph 1 (c), which prohibits outrages upon human dignity, and paragraph (2), which recognises the duty to care for the sick and wounded.

B. North Kivu

88. The Investigative Team received testimony from witnesses who were present during the attacks on Katale, Kahindo, Kibumba, Mugunga and Lac Vert camps. Many sources agree that thousands of persons were killed during these attacks. However, due to the constraints under which the Team laboured, no detailed information was obtained about the number of casualties, the age, sex and status of the victims, and the precise circumstances of their death. Similarly, the Team was unable to obtain reliable information about the degree of military presence (armed former Rwandan soldiers and Interahamwe) in the camps. There is credible testimony that forces located in the camps returned fire during the attacks on some of the camps. This makes it impossible to determine whether the attacks on the camps had any legitimate military objective, or were simply attacks on the civilian population as such. Consequently, the information below refers only to specific incidents with regard to which the testimonies received are sufficient to support firm conclusions regarding what occurred.

1. Killings in Goma

89. Witnesses reported that on 1 November 1996, when the AFDL arrived in Goma, they asked inhabitants to tell them where Hutu men could be found. One witness reported seeing AFDL soldiers, particularly child soldiers, killing non-combatants for personal reasons. Another witness was about to be killed by the AFDL because he was suspected of being a former member of the Zairian Army (FAZ). He managed to escape because the area came under attack.

90. These witness statements indicate that an unknown number of non-combatants were killed during and immediately after the capture of Goma, by AFDL troops, in violation of international humanitarian law.

2. Killings of inhabitants of Mugunga camp

91. AFDL troops entered Mugunga camp on 15 November 1996, after heavy shelling. The men in the camp were separated from the women, the children and the elderly, who were told that they should return to Rwanda. One witness quoted a soldier as stating that those who did not return would be killed; two witnesses reported troops beating the inhabitants while ordering them to return to Rwanda. Several witnesses testified that hundreds of men, in groups of 20 – 100, were taken to Lac Vert, a crater lake approximately one kilometre from Lac Vert camp. Male refugees, and some university-educated females, were trussed up and thrown into the lake, where most drowned. Shortly thereafter, soldiers opened fire indiscriminately on

the remaining refugees in the group near Lac Vert. During the two days following the capture of the camp, several groups of 20 to 100 were taken to the edge of the crater lake, according to eye-witnesses. Injured persons were thrown into the lake, and some refugees were forced to push others into the lake, before being pushed in themselves. Still others were shot at the edge of the lake.

92. Survivors of the Mugunga camp attack reported that it was difficult to flee toward the west because the AFDL and the Mai-Mai, with whom the AFDL had apparently entered into an agreement, were present in large numbers in the hills above the town of Sake. Several witnesses informed the Team that they saw many refugees being shot by soldiers in the hills of Masisi, and two witnesses reported seeing Mai-Mai militia killing refugees.

93. This testimony indicates that the AFDL and Mai-Mai systematically executed many non-combatants after the capture of Mugunga camp, in violation of international humanitarian law.

3. Killings in North Kivu after the fall of Mugunga camp

94. Another witness described an attack on a bus by armed Rwandan Hutus, presumably former Rwandan soldiers or Interahamwe militia who had fled the camps after they were attacked by the AFDL. After firing on the bus, the attackers systematically robbed and executed the passengers still alive. The witness estimates that over 50 persons were killed, most of them Hunde.

95. Testimony was also received concerning a massacre committed by AFDL troops on 13 December 1996, in Kaguza, a Hutu village in Masisi. The AFDL called a public meeting in the central market for 9h00. Shortly after the AFDL commander began the meeting, AFDL soldiers in houses nearby began shooting into the crowd. The witness fled, and was unable to indicate the number of dead. Another massacre by the AFDL occurred in the village of Nambi, in Bahunde, Masisi, in March 1997. Soldiers entered the market and requested the population, which was entirely Hutu, to gather. Because of rumours that the AFDL had killed everyone who attended a meeting in a neighbouring village, the witness fled to a hill outside the village. From this vantage point, he saw the soldiers shoot approximately 30 men who had been captured in the village and who appeared to be begging for their lives.

96. The testimonies summarised above indicate that the AFDL, Mai-Mai and armed Rwandan Hutu elements all engaged in the killing of non-combatants after war broke out in North Kivu in October 1996. Because these killings occurred in the context of armed conflict, they contravene international humanitarian law, even though none of the groups mentioned here constituted, at the time, the armed force of a State.

C. Flight of displaced camp residents and related killings

97. After the attacks on the camps in North and South Kivu, many Rwandan Hutus fled westward. UNHCR estimates that 600,000 returned to Rwanda shortly after the attacks on the camps. Although statistics on the camp population were certainly inflated, this suggests that the number of persons who fled into the interior of the country was on the order of 400,000. Several temporary camps were set up in the interior of the country during the months that followed. The largest of these were attacked in April 1997. The Investigative Team received testimonies concerning attacks on these camps, as well as attacks on displaced Rwandans as they fled through the forests and roads of central and western Zaire. By May several thousand had reached the border with the Republic of Congo. The Investigative Team received extensive information on this

massacre from credible sources in the area at that time, and was able to corroborate the information they provided by testimonies and forensic evidence.

1. Shanje

98. A camp at Shanje was shelled shortly after the fall of Goma. One witness counted some forty persons who were killed as a result of the shelling. When soldiers entered the camp, they separated men from women and children and told the latter to return to Rwanda. Soon after this, many of the men were shot, according to witnesses. Testimony also describes how one Rwandan Hutu was forced to witness the execution of his wife and children. Testimony also indicates that many unarmed displaced Rwandans were hunted down and killed in the bamboo forest near this camp.

2. Shabunda

99. Camps in the Shabunda area of South Kivu Province were attacked during the first week of February 1997. A witness stated that members of the AFDL told him that they wanted to "get rid of the Interahamwe". Heavy gunfire was later heard coming from a bridge called Byankugu, near Shabunda. One source witnessed the stabbing and killing of a displaced Rwandan Hutu at this bridge, and saw the body thrown into the river where he could see at least another 30 bodies. The following day local villagers were brought to the area, and order to dispose of the remaining bodies in the river. The testimony indicates that the victims appeared to be Rwandan Hutus, including men, women and children, and that the number appeared to be in the hundreds.

3. Tingi-Tingi

100. A large camp at Tingi-Tingi, more than 200 kilometres south-east of Kisangani, was attacked by insurgent troops as they marched towards Kinshasa on 28 February or 1 March. There are no accurate estimates of the numbers of persons killed in the attack.

101. After the attack, the inhabitants fled in the direction of Kisangani. Seven kilometres west, near the town of Lubutu, it was necessary to cross a narrow bridge. This slowed their flight, allowing AFDL troops to catch up with them early in the afternoon of 1 March. Several witnesses reported that the troops killed unarmed displaced persons at this point. The number of victims was in the hundreds, according to conservative estimates.

4. The Kisangani area

102. On or about 22 March 1997, displaced Rwandans moving north toward Kisangani split into two groups at Kilometre 52, a junction which has a road leading west toward Opala. Many former Rwandan soldiers (ex-FAR) and their families headed west at this junction, while a large majority of refugees continued northward towards Kisangani. Soon after, witnesses state, those moving north were attacked by soldiers. It is not clear how many were killed, and whether the soldiers were AFDL or Rwandan Army (RPA) troops, or a combination of the two.

103. During the early morning of 26 March 1997, an estimated 30 to 50 soldiers entered a temporary camp for refugees at Obilo, approximately 82 kilometres south of Kisangani, and began killing the inhabitants, in

particular the men. At least 50 to 80 persons were killed. There was no armed resistance by the inhabitants of the camp, according to information provided to the Team.

104. Several witnesses also stated that, on at least one occasion, AFDL soldiers in civilian clothing presented themselves to displaced persons at Obilo as Red Cross staff, indicating that men were needed as labourers. Through this ruse, soldiers took men to a location where they were attacked and an unknown number were killed.

105. Two large temporary camps were located at Kasese, 25 kilometres south of Kisangani. 'Kasese I' camp was surrounded and attacked early on the morning of 22 April 1997. Many of the inhabitants fled, but survivors estimate that at least 500 persons were killed in the attack. Some witnesses state that there were some armed men among the camp population, but it is not clear whether the attack met with armed resistance. The vast majority of inhabitants were weak and sick, after months of flight in extremely difficult conditions. Witnesses indicate that the attack was carried out by AFDL, with the participation of Rwandan soldiers (RPA) and the local population. They also state that bodies were gathered, graves were dug, and heavy machinery was used to move and burn the bodies. The AFDL blocked access to the area while the massacre was being carried out, and during efforts to remove and destroy corpses.

106. Biaro camp, 41 kilometres South of Kisangani, also was attacked by the AFDL on 22 April. The number of victims is unknown.

107. During the last week in April, after the attacks on Kasese and Biaro camps, AFDL soldiers located a number of survivors, informed them that a repatriation effort was underway, and forced to march in the direction of Obilo. At or near Kilometre 52, they reached a barrier and were told to sit by the side of the road. Soon after, more soldiers arrived and opened fire, killing a large number of unarmed men, women and children.

108. Reliable, detailed information about the attacks on Tingi-Tingi, Kasese, Biaro and the other camps in this area as such is scarce, due largely to the fact that the AFDL blocked access to them before attacking them. There is clear and credible testimony, however, that women, children and other unarmed non-combatants who survived the attacks on these camps were hunted down and killed indiscriminately, in violation of international humanitarian law.

109. The testimonies received by the Team do not clearly indicate the extent to which these violations were committed by AFDL troops or troops including both AFDL and Rwandan elements, nor was the Team able to obtain reliable information as to the command structure of the troops responsible for these violations.

5. Equateur Province

110. By early May, several thousand displaced Rwandans had reached the village of Wendji, 25 kilometres south of Mbandaka, the capital of Equateur province, and more had reached Mbandaka itself. Most of the refugees were young males, but there were also many women and children. Local authorities have told the Investigative Team that that the Rwandans were armed when they arrived in the region, but other sources indicated that local authorities set up a checkpoint to disarm those carrying arms as they arrived. The Investigative Team received 14 statements from women of the village who were raped by the Rwandans. Credible sources corroborated the statements.

111. On 13 May 1997, AFDL troops reached the area, and a massacre ensued. According to the statements of witnesses, the massacre began at the village of Wendji, and later continued along the road to Mbandaka and in the city itself.

112. In Wendji, the troops announced to the local population in Lingala that they "were not there for the Congolese", but rather for the refugees. Using Lingala, the local language, they ordered the local population to place white headbands around their heads, to allow the soldiers to distinguish them from the Rwandans. Soon after this, the soldiers began to shoot the latter. The number of victims killed in Wendji is unknown. Many corpses were thrown in the river. Reliable information was received concerning the location of a mass gravesite containing over a hundred corpses, including women and children.

113. The Team's forensic experts managed to locate this site, and made a preliminary exploration of one grave before being forced to discontinue their work (see Cap. I). The site was located exactly where the testimony indicated it would be found, and the size of the site and number of apparent graves located within it were consistent with the testimony given to the Team concerning the number of corpses buried there in May 1997. The condition of the vegetation within the site was consistent with reports that efforts had been made to remove bodies from mass graves in this area during the weeks preceding the Teams first deployment there, in December 1997. The preliminary exploration of the site produced evidence that it had contained bodies which had decomposed, and subsequently been removed. Two small bones were found, belonging to two different adults (see Annex II).

114. Many Rwandans managed to flee Wendji in the direction of Mbandaka, while others fled into the swamps north of Wendji. Credible statements described how soldiers or local citizens captured some of those who fled into the swamps and brought them out, where they were stabbed, shot or beaten to death. Testimonies also were received indicating that many persons fleeing Wendji were killed along the road to Mbandaka.

115. At approximately 10h00 during the morning of 13 May 1997, the Rwandans fleeing Wendji by foot began to arrive in Mbandaka. Most fled in the direction of the port, hoping to be able to escape by boat to the Republic of Congo. AFDL soldiers arrived shortly thereafter, first by foot and later in vehicles. When they arrived at the ONATRA (*Office Nationale de Transport*) port area, they commenced shooting indiscriminately at the Rwandans, including some sitting on a barge. As the port area is surrounded by building or walls on three sides, the Rwandans were trapped, and many jumped into the river. Estimates by witnesses of the number of persons killed at the port vary widely, from 40 to 500. The most credible sources appear to be those which estimate that at least two hundred persons were killed, excluding deaths by drowning. Photographic evidence provided to the Investigative Team shows that some of the victims, including a child, were dismembered, and one victim was beheaded. One witness provided a list of the names of some of the victims.

116. An unknown number of Rwandans were killed elsewhere in the town. Many corpses were left untouched for two days, particularly those not killed in the port area. A clean up was then conducted, and the bodies buried in mass graves. Some of those killed at the port were thrown into the river.

117. The testimonial, forensic and photographic evidence obtained by the Team concerning the events in Wendji and Mbandaka clearly indicates that several hundred unarmed Rwandans were massacred there on

13 May 1996. The Investigative Team received testimony indicating the names of officers in charge of the massacre at Mbandaka. According to this information, the officer nominally in charge was AFDL, but those in effective control were Rwandan Army officers. These killings violate international humanitarian law and, to the extent that Rwandan officers were involved, Rwanda's obligations under international human rights law.

118. The Team also received testimony from a number of witnesses concerning the killing of unarmed Rwandan Hutus by soldiers in the area of Boende, eastern Equateur Province during April and May 1997. In some cases, the witnesses stated that Rwandan Army (RPA) soldiers were present or participated in these killings.

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1. The present government of the Democratic Republic of Congo applies the term "*génocidaire*" indiscriminately to refer to all Rwandans who entered the country after the 1994 genocide. This is unjustified; many of the Hutus who fled the Tutsi takeover did not play an active role in the genocide. However, there is no doubt that many of those who fled to Zaire had played an active role in the genocide. As such, they do not deserve to be called refugees, even if the risk of persecution is real. For this reason, the present report often uses the term Rwandan Hutus, rather than 'refugees', in referring collectively to those who fled Zaire in 1994.

[2] Based on official statistics of registered refugees and asylum seekers; the real figures are probably higher.